



The Gazette of India



PUBLISHED BY AUTHORITY

No. 2 | NEW DELHI, SATURDAY, JANUARY 9, 1960/PAUSA 19, 1881

NOTICE

The undermentioned Gazettes of India Extraordinary were published upto the 30th December 1959 :—

Issue No.	No. and date	Issued by	Subject
184	S.O. 2858, dated 24th December, 1959	Ministry of Commerce and Industry	Appointing a body of persons for the purpose of making a full investigation into the circumstances of M/s. Ilthec Singh Manufacturing Co. Ltd., Ahmedabad.
185	S. O. 2859, dated 28th December, 1959	Election Commission, India.	Calling upon the Baramati Parliamentary Constituency, Bombay, to elect a person in the House of the People.
	S. O. 2860, dated 28th December, 1959	Do.	Appointing dates for the by-election to be held in the Baramati Parliamentary Constituency, Bombay.
	S. O. 2861, dated 28th December, 1959	Do.	Fixation of Hours during which a poll shall be taken for the election to the House of the People from the Baramati Constituency.
	S. O. 2862, dated 28th December, 1959	Do.	Direction that method of voting by marking the ballot paper shall be followed at all the polling stations in the by-election to the House of the People from the Baramati Constituency.
186	S. O. 2863, dated 29th December, 1959	Ministry of Home Affairs.	Appointing 1st April, 1960, on which the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959, shall come into force.
187	S. O. 2864, dated 30th December, 1959.	Ministry of Information and Broadcasting.	Approval of films specified therein.
188	S. O. 2865, dated 30th December, 1959	Ministry of Law	Declaration of the result of the election to the House of the People in the Dhanbad Parliamentary Constituency No. 83.

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

PART II—Section 3—Sub-section (ii)

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administrations of Union Territories).

ELECTION COMMISSION, INDIA

New Delhi, the 28th December, 1959

S.O. 58.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Order pronounced on the 14th November, 1959 by the Election Tribunal, Raichur.

IN THE COURT OF THE ELECTION TRIBUNAL, RAICHUR

Saturday, the 14th day of November 1959

PRESENT:

Sri R. Puttaraj Urs, M.A., B.L.,

Member, Election Tribunal, Raichur.

ELECTION PETITION No. 308 OF 1957

Shivamurthi Swamy S/o Siddappayaswami, aged about 36 years, residing at Alwandi, taluk Koppal, P.O. Alwandi, Dist. Raichur, Mysore State.

(By Sri B. S. Patil)— *Petitioner.*

Vs.

Sangappa S/o Andanappa, aged about 50 years, Merchant, residing at Koppal, District Raichur, Mysore State.— *Respondent.*

(By Sri D. Venugopalachari
and Sri. Gurunath Rao.)

This is a petition under section 80 of the Representation of the People Act 1951 for having declared the election of the Respondent to the House of the People from the Koppal Parliamentary Constituency at the last General Elections 1957, void on the grounds that the Respondent had committed various corrupt practices.

2. The petition was filed on 26-4-1957.
3. The Written Statement was filed on 5-8-1957.
4. The following issues were framed on 26th May, 1958.

(1) Did the respondent, his election agents and/or persons interested in the respondent and/or acting with the consent of the respondent commit the corrupt practice of bribery by arranging refreshments, Byalatas and dramas with the object of inducing directly or indirectly the voters to vote or refrain from voting on all or any of the dates and at all or any of the places as mentioned in paras 3(a) and 5 of the petition and paras 1 to 3 of the Schedule of Particulars?

(2) Did the respondent, his election agents and/or persons interested in the respondent and/or acting with the consent of the respondent commit the corrupt practice of bribery by offering gratifications in the form of construction of a tower to a temple, construction of a school building and construction of a well for Harijans at the cost of the respondent as stated in paras 3(a) and 5 of the petition and paras 1 to 3 of the Schedule of Particulars?

(3) Did the respondent, his election agents and/or persons interested in the respondent and/or acting with the consent of the respondent commit the corrupt practice of bribery by distributing money and clothes in the manner mentioned in paras 3(a) and 5 of the petition and paras 1 to 3 of the Schedule of Particulars?

and was this corrupt practice so general throughout the entire constituency that the election was not a free election.

(4) Did the respondent, his election agents and/or persons interested in the respondent and/or acting with the consent of the respondent commit the corrupt practice of undue influence by threatening the electors and/or persons in whom the petitioner was interested with injury to these persons and their reputation and by inducing the electors to believe that they and in those in whom they were interested would become or be rendered object of divine displeasure and/or spiritual censure as alleged in paras 3(b) and 6 of the petition and paras 4 and 5(a), 15(c) of the schedule of particulars and was this corrupt practice so general throughout the constituency as to render the election not a free election.

(5) Did the respondent, his election agents and/or persons interested in the respondent and/or acting with the consent of the respondent commit the corrupt practice of systematic appeal to voting on the ground of caste, race, community or religion and/or the use of appeal to religious symbols or the use by or appeal to national symbols, such as the national flag and/or the national emblem for the furtherance of the prospects of election of the respondent as stated in para 3(c) and 6 of the petition and paras 4 and 5 (a, b and c) of the schedule of particulars?

(6) Did the respondent, his election agent and/or persons interested in the respondent and/or acting with his consent commit the corrupt practice of publishing statements of facts which were false or which he or they did not believe to be true in relation to the personal conduct and character of the petitioner being statements reasonably calculated to prejudice the prospects of the Petitioner's election in the issue of "Thungabhadra" "Netaji" and "SWATANTRA" as stated in paras 3(d), 6 (a to c) and 7 of the petition and paras 6 and 7 of the schedule of particulars?

(7) Did the respondent, his election agents and/or any other person interested in the respondent and/or with his consent commit the corrupt practice of hiring on payment of any vehicle for the use and conveyance of voters to and from any polling stations as alleged in para 3(e) of the petition and the last and 8th para of the schedule of Particulars?

(8) Did the respondent his election agents and/or any other persons interested in the respondent and/or with the consent of the respondent commit the practice of incurring of authorising expenditure in contravention of Section 77 of R.P. Act and including expenses incurred for printing publishing and distributing poems, pamphlets and lavanis in the manner alleged in paras 3(f) and 9 of the petition against the provisions of Section 123(6) of R.P. Act?

(9) Did the respondent, his election agents and/or persons interested in the respondent and/or with his consent commit the corrupt practice of procuring or attempting to procure the assistance of persons in the service of Government for the furtherance of the respondent's election as alleged in para 3(g) and 10 of the petition and last para of the Schedule of particulars and also para 8?

(10) Has not the election of the respondent been conducted in conformity with the provisions of the Constitution, R.P. Act, rules and Notifications made under that Act as stated in paras 11 and 12 of the petition?

(11) Has this non-compliance affected materially the result of the election. If so, is the election liable to be set aside.

(12) Is the election of the respondent liable to be set aside for any or all of the reasons urged in the petition as prayed for by the Petitioner?

(13) Whether any of the alleged corrupt practice mentioned in the petition were committed by persons other than the respondent or his election agents contrary to orders and without the consent of the Respondent?

(14) Whether the respondent took all reasonable precautions against the commission of such corrupt practices and whether any of the corrupt practices are of a trivial and limited character and did not affect materially the result of the election?

(15) Whether the respondent or his election agents or other persons are guilty of any corrupt practice specified in section 123 and as such are liable to be disqualified under Section 140 Representation of People Act?

(16) To what relief petitioner is entitled?

5. The petitioner examined 158 witnesses, and filed Exhibits P to P 768.
6. The respondent examined 90 witnesses and two witnesses on commission at Delhi, and filed Exhibits R. to R. 242.
7. Arguments were heard from 31st August, 1959 to 9th October, 1959.
8. Order pronounced as follows:—

ORDER

The petitioner is one of the two candidates that contested for a seat in the House of the People from the Koppal Parliamentary Constituency in the last General Election of 1957, and the Respondent is the other. The petitioner was contesting on behalf of Lokasevak Sangha and the Respondent was candidate of the Congress party. The respondent was declared duly elected as he obtained 1,30,849 votes, while the petitioner polled 98,093 votes. The petitioner contends that the election of the Respondent is void because of various corrupt practices committed by him, his agents and by persons interested in the Respondent with his consent and that of his agents.

2. The first of these corrupt practice mentioned in the petition is bribery. It is alleged that the respondent, his agents and persons interested in the respondent or acting with his consent, gave, offered and promised gratifications, with the object of inducing, directly or indirectly, to vote for the Respondent or refrain from voting, in the form of payment of money distribution of clothes, offering of tea or tiffin to the electors on the polling day, promises to repair Tanks and Wells, construction of buildings, providing free entertainments, etc. It is also alleged that this corrupt practice was so widespread that it enveloped the whole constituency.

3. The second is that the Respondent, his agents and persons interested in him or acting with his consent, interfered, directly or indirectly with the free exercise of their electoral rights by electors by threatening them and persons in whom the petitioner was interested with injury to their persons or reputation, and inducing the electors to believe that they and those in whom they were interested would become objects of divine displeasure or spiritual censure. It is stated that this was done by holding out threats of physical injury or dismissal from office and denying the electors the rights in the village etc. This was also, it is alleged, accomplished by using National Flags, Mahatma Gandhi's picture, distributing religious pamphlets and making speeches telling the electors that if votes were not given to Basavanna, the symbol of the Congress, they would be committing sin.

4. The third is that the respondent, his agents or persons interested in the respondent or acting with his consent, made systematic appeal to the electors to vote or refrain from voting on grounds of caste, race, community, religion or the use of or appeal to National symbols, such as the National Flag and the National Emblem, for the furtherance of the prospects of the election of the Respondent. In this regard, it is alleged that the Respondent, his agents, and other interested in him, distributed pamphlets containing Lawani, appealing to, and evoking the religious sentiments of the electors and leaflets appealing to the Muslims to vote in the interest of their community to the Respondent etc.

5. The fourth is that the Respondent, his agents and persons interested in the Respondent or acting with his consent published statements of facts which were false and which they believed to be false and which they did not believe to be true, in relation to the personal character and conduct of the petitioner and in relation to the candidature of the petitioner being statements reasonably calculated to prejudice the prospects of the petitioner's election. It is mentioned that these false statements were got published in the news papers "Thungabhadra", "Netaji" and "Swatantra" and also that the agents of the Respondent made such false statement in the course of their election speeches.

6. The fifth corrupt practice is that the respondent, his agents and persons interested in him or acting with his consent, hired or procured, on payment or otherwise, vehicles for the conveyance of the elector to and from the polling stations on the polling days.

7. The sixth is that the Respondent, his agents and persons interested in the Respondent or acting with his consent, incurred or authorised expenditure in contravention of section 77 of the Representation of People Act, 1951. In this connection, it is alleged that the Respondent has suppressed many items of expenditure incurred by him for his election in his Return of Election expenses

and they are expenses for the food and drink offered by him on the polling day, moneys spent on the printing and distribution of various pamphlets, amounts spent on hire of Carts and Lorries and the petrol charges incurred in that connection etc. It is also avowed that the Respondent has exceeded the maximum prescribed under the rules.

8 The seventh and the last of these corrupt practices mentioned in the petition is that the Respondent has agents and persons interested in the Respondent and acting with his consent, obtained or procured and abetted or attempted to obtain or procure the assistance of persons in the service of Government for the furtherance of the prospects of the Respondent's election. In this respect it is alleged that a number of patwaris worked for the Respondent and canvassed for him in furtherance of his election prospects.

9 The petitioner has also furnished particulars of these various corrupt practices, giving the names of the parties alleged to have committed such corrupt practices and the date and place of the commission of each such practice.

10 Further, it is also alleged that the result of the election as regards the Respondent has been materially affected by the non-compliance with the provisions of the Constitution, the Representation of the People Act, and the Rules and orders made thereunder, and by the improper reception, refusal or rejection of vote by the Officer in charge of the elections and hence void. It is further stated that the symbol of "Car" that the petitioner had asked was not given in time and that this caused great confusion in the minds of the electors and it had materially affected the result of the election. Then again some allegations have been made against the Presiding Officers and Polling Officers that they gave discriminatory treatment to the polling agents of the petitioner and that they behaved in a way which was partial and helpful to the Respondent and this also had resulted in materially affecting the result of the elections.

11 The written statement of the Respondent is a complete denial of the allegations of the petitioner and the substance of it is this. The petition is false, vexatious, contrary to law, and not maintainable. The allegations and the particulars relating to the various corrupt practices are all vague, assertions invented for the purposes of this petition. The particulars and details of the corrupt practices given in the petition are not in conformity with the provisions of the Representation of the People Act and the rules framed thereunder. They are vague and do not merit any discussion or enquiry. The assertion that there has been general bribery throughout the constituency and that it was not a free or fair election and that the coercion and intimidation and influence were throughout used is all false. The persons said to have committed these corrupt practices are not the agents of this Respondent. The Presiding Officer and Polling Officers discharged their duties fairly and impartially and the result of the elections had not been materially affected.

12 He has summed up by saying that in the conduct of the election he, his election agent or polling agent has not been guilty of any of the corrupt practices alleged by the petitioner. It is also stated that no person has with the consent of the Respondent or his election agent committed any of the corrupt practices alleged. The Respondent has further stated that in the conduct of the elections he and his election agent took all reasonable precautions for preventing the commission of any corrupt practice and that if any corrupt practices had been committed they were contrary to orders of the Respondent and those of his election agent. It is also explained that the corrupt practice of treatment of serving of tea or tiffin said to have been done were too trivial in character that they never exceeded the limits of customary village hospitality.

13 As regards the complaint in regard to the territorial changes of the constituency and the allotting of symbol it is stated that the orders were all quite in order and they had not affected materially the results of the election.

14 Before proceeding to consider the various corrupt practices alleged in the petition, it is desirable to discuss and decide what an Agent is under the Election Law. It is the accepted view that no precise definition can be laid down as to what constitutes election agency. According to Halsbury's Law of England, Volume XII, 2nd edition, paragraph 501, page 245. The candidate's liability under the parliamentary common Law of Agency depends upon a peculiar principle special to this matter and distinct from the principles prevailing in Criminal and Civil law of agency. The candidate's liability under this principle may extend to the case of every person who is a *de facto* member of his staff which is conducting the election and whose services are directly or indirectly recognised or made

use of by the candidate or his election agent, whether such person is paid or unpaid". Again, in "The Law of Parliamentary Election and Election Petition" by Fraser, 3rd edition, page 73, it has been observed as follows: With regard to election law the matter goes a great deal further because a number of persons are employed for the purposes of promoting an election who are not only not authorised to do any corrupt act but who are expressly enjoined to abstain from doing. Nevertheless, the law says that if a man chooses to allow a number of people to go about canvassing for him and to issue placards and to form a committee for his election and to do things of that sort, he must, to use a colloquial expression, take the bad with the good. He cannot avail himself of those people's act for the purpose of promoting his election and then turn his back or sit quietly by and let them corrupt the constituency". The law in India prior to the passing the Representation of the People Act, 1951, seems to have followed the English Law of Agency, as stated above, and under the present definition of an "Agent" agency need not be express; it may be implied or constructive. It may be inferred from the facts and circumstances of the case and from the general conduct and action of the party. "Several acts proved to establish agency may each taken singly be insufficient and yet taken as a whole be held to prove agency conclusively." No doubt, the consent of the candidate has to be established, but this consent need not necessarily be in writing. It is enough if it can be inferred from the surrounding circumstances. It was observed in *T. C. Basappa Vs. Nagappa*, 3, E.L.R., 197, that the term Agent in election law was a wide significance. No authorisation or declaration in writing is necessary and the facts of agency may be established by circumstances arising out of the general features of the case, the conduct and action of the parties and the subsequent recognition of the supposed agent or at least an absence of disavowal of such acts. The doctrine of agency is carried by election law much further than in Civil and Criminal Cases. "This is also the view held by our own High Court in *Miscellaneous Appeal No. 60 of 1958*. Similarly, the Assam High Court has laid down thus." For the purposes of the Act, the expression "Agent" has a much wider connotation than it is ordinarily understood to have under law of contract. Anybody who acts in furtherance of the prospects of the candidate's election may be said to an agent of the candidate concerned, provided he does so with the consent of the candidate. This consent may not necessarily be an express consent and no written document is necessary. It may be gathered and implied from the circumstances of the case. Under the Act, an "Agent" includes not only the person who has been specifically engaged by the candidate or his election agent to work for him in the election, but also a person, who does in fact work for him and whose services have been accepted by the candidate. Thus an association of persons or a society or political party and its prominent members who set up a candidate, sponsor his cause and work to promote his election may be aptly called an "Agent" of the candidate for election purposes. If it is found that the person concerned was merely an intermeddler in the election or a mere volunteer, then of course the candidate cannot be said to have any responsibility for his action, even though the person has acted for the candidate's benefit and with a view to advance his interests in the election" A.I.R. 1959 October, 196. From the above decision and opinions it is clear that the contention of the learned counsel for the Respondent that mere canvassing on the part of the person is not enough to hold that he is the agent of the candidate, is not correct.

15. There is yet another point to which I refer at this stage alone and that is as regards the onus of proof in Election Petitions. It was urged by the learned Advocate for the Respondent that, as held by the Supreme Court and other High Courts, the proceedings in an Election Petition were of the nature of a quasi-criminal trial and as such the Petitioner had to prove every allegation in the petition and that if this onus had not been discharged by the petitioner, non-examination of any witnesses by the Respondent was immaterial. It is true that it has been observed by Their Lordships of the Supreme Court that the proceedings of an election petition are of a quasi-criminal nature. This also has been the opinion of the Andhra High Court, *vide* A.I.R. 1959 Andhra Pradesh 111, *Narsimhareddi Vs. Bhoomaji*. It has to be noticed, however, that the facts of the case of the Andhra High Court cannot be applied to this case, as in that case no witnesses had been examined on the side of the Respondent and in this case a number of witnesses have been examined by the Respondent. I am therefore inclined to think that though the proceedings in an Election Petition are of a quasi-criminal nature, yet there cannot be any special mode of appreciating the evidence in such cases. As laid down by Their Lordships of the Assam High Court, "When the respondent has examined a number of witnesses like the Petitioner and the Tribunal has based its conclusion on that

evidence, the question of burden of proof is not of much value. In the present case, there is plenty of evidence on the side of the Respondent and as such it will not be incorrect to appreciate the evidence on the side of the Petitioner in conjunction with that produced by the Respondent. The question raised by the learned Advocate does not, therefore, arise in this case at all, *vide* also A.I.R. 1959 Assam, 196.

16. The first of the corrupt practices alleged to have been committed by the Respondent and his agents or persons interested in him is bribery. It is alleged that this was practised in five forms: The first is payment of actual cash, the second is providing tea and tiffin to the voters on the polling day, the third is free distribution of clothes, the fourth is promises to build tanks, towers and wells and School buildings, and the fifth is providing entertainments free of charge to the electors. We may take the second form for consideration first, for that is the form in which elaborate evidence has been adduced. In the petition it is alleged that in as many as 20 places tea and tiffin were given on the polling day to the voters and it is also said that this corrupt practice was so general that it enveloped the entire constituency.

17. The first place at which this arrangement is alleged to have been made is Mandalgeri in Yelburga taluk. The allegation is that at Mandalgeri on the polling day, i.e., 10th March 1957, a Thatti shed was constructed within a hundred yards of the polling station and tea and tiffin were being served by Basalingappa Bistareddy and Mahadevappa Bandi and that Sadasivagouda was standing at the door inviting the electors and it is also alleged that the former two were workers and the latter the agent of the Respondent. This affair has been spoken to by a number of witnesses. The first is P.W. 34, Sekharappa. He is a man of Mandalgeri and he was the polling agent of the petitioner on the polling day there. He has stated that he was sitting that day in the polling booth and that he then saw about 30 *maroos* from the polling booth a new tea shop opened and that he found people taking tea there, that he also saw Sadasivappa standing outside, that he did not see who was inside, that after sometime Somanna Dombal, P.W. 120, Vakul of Koppal and the election agent of the Petitioner, came there and asked him whether he did not know the tea shop opened outside, that he then told him that he knew it but he did not know that it was against law and that he did not therefore take any steps. He has further stated that he went to the Presiding Officer and gave him some paper on which he had written something, that then the Presiding Officer, Somanna and himself went to the tea shop and that there were people in the tea shop, that they all ran away after they reached it and that they were all drinking tea there. He has also stated that the Presiding Officer got a panchanama written and got the tea shop pulled down and cups and saucers removed. This witness has stood the cross-examination well and I do not see any reason why he should be disbelieved.

18. The next witness that he has spoken to this is P.W. 42, Sekhara Gouda. He is the Police Patel of Mandalgeri and he is a man who has no connection with any political parties. He has stated that on the polling day, he was on duty at the Chawadi where the polling booth was situate, that at about 10 A.M. Somanna Dombal, P.W. 120, came there, that he enquired for the Lokasevak Sangha workers and said that there was a tea shop outside and gave a petition to the Presiding Officer. He has further stated that the Presiding Officer, Somanna Dombal, a Constable, himself, and Sekharappa Meti, went to the tea shop, that there were some persons inside it, but on seeing them they all ran away, that Sadasivarao was standing behind the Chappara, that he too went away that Mahadevappa Bandi, and Bistareddy Basalingappa, who were giving tea were inside, that one Thotigundi Shankarrappa was sitting smoking a beedi, that in front of him there were a cup and saucer and that there were other cups and saucers and a kettle and also other articles there. He has further stated that the Presiding Officer asked Mahadevappa Bandi and Bistareddy Basalingappa what was all that, that they said that Sadasivarao had arranged a tea shop for and on behalf of the Respondents, that then the Presiding Officer wrote a panchanama and that he signed it and that the Panchanama was written after enquiring Mahadevappa and Basalingappa. This witness has also stated that Basalingappa Bistareddy is the *Beega* of Shankaragouda, the respondent in E.P. 258/57. This witness has also stood the cross-examination well and I see no grounds to reject his evidence.

19. The next witness that has spoken to this is P.W. 127, Shantappa. He is the Police Constable, who was deputed for duty at the polling station at Mandalgeri on the polling day. He has stated that he was there on duty, that the polling booth was located in the Chawadi that near the polling booth was the house of Bistareddy Basappa, that by the side of the wall of that house Bistareddy

Basalingappa and Mahadevappa Bandi were putting up a Jophadi, that P.W. 120, Dombal Somanna came there, that he gave a petition to the Presiding Officer complaining that tea shop had been opened, etc., that the Presiding Officer went to the tea shop, that he accompanied him, that Somanna Dombal also came and that Moti Sekharappa also came, that Police Patel Sekharappa Gouda also came with them, that they all went there to the jopadi put up near Bistareddy Basalingappa's house, that in that jopadi there were cups and saucers, that there were also some persons in the jopadi, that they all went away on seeing these people coming there, that only Bandi Mahadevappa, Bistareddy Basalingappa and Thotagundi Shankarappa were the only ones, that the last was sitting smoking a beedi, and that a cup and saucer were by his side. He has further stated that the Presiding Officer asked Basalingappa and Bandi Mahadevappa why they had kept a tea shop in the polling area against law and asked them if they had a licence, that they said that they had no licence, that they had opened it only for that day as per the instructions of Shankara Gouda and Sanganna, that the Presiding Officer made a panchanama, that the Presiding Officer also made statements of Bistareddy Basalingappa and Mahadevappa Bandi, that Sadasivarao, Patwari, was near the tea shop, that the tea shop was closed and that the tea shop was within one hundred yards of the polling booth. This witness has not only stood the cross-examination well but he is unconnected with any political party and an officer of Government. His evidence appears to be straight, candid and impartial and as such I cannot but accept it.

20. The last witness in this regard is P.W. 120, Dombal Somanna. He is an Advocate practising at Koppal and he was the election agent of the petitioner. He has stated that he went to Mandalgeri on the polling day at about 9 or 10 A.M., that he saw on his way within a hundred yards from the polling booth a hotel at which Sadasivarao was standing and in which tea and refreshments were being given, that he then went to the polling booth and gave a complaint as per Ex. P. 206 to the Presiding Officer, that on that complaint the Presiding Officer got the tea shop removed and got a panchanama made. It is not necessary to elaborate further the evidence given by this witness in this regard, for I feel absolutely no doubt about the veracity of his version in this matter. It was no doubt argued by the learned Advocate for the Respondent that he had not mentioned the names of the hotel keepers and that this was the only petition that he had given in regard to this corrupt practice and as such his evidence had to be taken *cum grano salis*. I am not inclined to accept that there are enough grounds to reject his testimony which is corroborated by the testimony of the other witnesses. I therefore consider that the argument of the learned advocate for the Respondent that this petition was filed only in pursuance of a conspiracy to create evidence to file a petition as the petitioner had failed to get majority of votes in some other portions of his constituency where the polling was over by this time, is a mere fancy.

21. It is clear from the evidence of all these witnesses that a tea shop had been opened at Mandalgeri on the polling day on behalf of the Respondent. There is also the documentary evidence to prove that this affair is not a mere concoction as stated by the learned Advocate for the Respondent. The evidence of P.W. 120 is, as seen above, that he gave a complaint to the Presiding Officer, that the Presiding Officer also made an endorsement on it. No doubt the endorsement is that the hotel is situated more than a hundred yards from the polling booth. This is against the evidence of the above witnesses and as such it cannot be taken at its face value. After all the distance of the hotel is not very material in this area. Whether the hotel was within hundred yards or beyond hundred yards, the fact remains that it was arranged by the agents of the Respondent and the Respondent cannot say that he is not responsible.

22. The fact that the hotel was got closed is itself a proof that the endorsement of the Presiding Officer that the hotel was beyond hundred yards is false. The evidence of P.W. 120, Dombal Somanna is that the endorsement was not made in his presence, and that he did not know anything about it and therefore I am inclined to think that the Presiding Officer has made this endorsement with some motive. It was also argued by the learned Advocate for the Respondent that according to the evidence a Panchanama came into existence that day and that the Panchanama had not been produced and as such no secondary evidence was admissible. No doubt, the Panchanama is not produced, but the petitioner is not to be blamed for it. He had taken out summons to the Returning Officer who stated that it was not available. Under such circumstances I do not think it is wrong to accept the evidence of this witness. I am therefore inclined to think that this affair alleged to have taken place on the polling day at Mandalgeri is true.

23. No doubt they have examined Sadasivarao, R.W. 89 to counteract the evidence of these witnesses. It is enough to state that he is a wholly unreliable witness. He has denied that he is a member of the Congress while the respondent himself says that he is a member of the Congress. There are many other false statements that he has made and this is evident from the reports of the Police Patil of Kukkanoor and Mandalgeri as per Exs. P. 333 and P. 167. His name also appears in "Thungabhadra" as per Ex. P. 42(c) and as such his denial that he was a member of the Congress cannot be believed. And it is not clear why the Respondent did not examine Bistareddy Basalingappa or Mahadevappa Bandi. On the whole, I would like to repeat that the arrangements for tea and refreshments at Mandalgeri are undoubtedly true.

24. The next place at which arrangements for tea on the polling day are alleged to have been made is Dyampur. It is alleged that at Dyampur the Respondent had got opened a tea shop through one Guriah Nandikol, who was his canvassing agent and that voters were called and given tea by Nandikol who used to tell the voters that they should vote for Congress candidate and this was on the polling day. The first witness that has spoken to this is P.W. 56, Mallareddiappa. He has stated that on the day of polling he went to the polling station, that on the way there was the house of Nandikol Guriah, that Nandi Kola Guriah and Kalkiah invited him for tea, that he went in and that they asked him to caste his vote to the Respondent. He has further stated that after he left the tea shop of Nandikol Guriah, he had to pass through the cattle shed of Nandikol Guriah and that tea had been arranged in that cattle shed also and that there were persons drinking tea there. He has further stated that N. K. Guriah, Kalkiah and Krishana Rao, Shanbhoga were the canvassing agents of the Respondent in his village. Though the evidence of this witness is uncorroborated, I am inclined to accept it, for he has stood the cross-examination well. He has given the names of the persons who were in the tea shop.

25. The next place at which tea is said to have been arranged on the polling day is Talkal. It is alleged that at Talkal arrangements for tea to be given to the voters had been made in the tea shop of Shivappa Byali, who was also the canvassing agent of the respondent. This too has been spoken to by only one witness P.W. 36, Balangouda. He has stated that arrangements for tea and tiffin had been made in the tea shop of Shivappa Byali; on the polling day that Venkareddy, proprietor of the dramatic company was supervising it, that he called him that day while he was going to the polling booth, that he asked him to take tea and give vote for the Respondent and that he went in and took tea. His evidence is no doubt uncorroborated, but, however, I am not inclined to reject simply on that ground, for he has given very valuable evidence in other respects also. He has stood the cross-examination well, though he has made some slips here and there, there is nothing in it to make him incredible. No doubt Shivappa Byali has been examined by the Respondent. It is clear that the evidence of this witness cannot be given any weight, because he has stated that Venkareddy had no dramatic company at the time of election, which is against the unimpeachable evidence on the side of the petitioner. There is a *plenthora* of evidence on the side of the petitioner to show that Venkareddy had got his dramatic company at the time of election and that he gave performances at Chikkavonkalakunte and Mangalore. He has also made a very valuable statement that some days before the polling the respondent had gone to him and asked him for his vote, and that the Respondent was visiting Talkal off and on and he knew him.

26. The next place at which arrangement for tea is alleged to have been made is Banapur. It is stated that one Venkappa Gadige, who is canvassing agent of the Respondent, has a tea shop at Banapur and that on the polling day he used to call the voters and give them tea and tell them to vote for Congress candidates. This has been spoken to P.W. 33, Veerannagouda. He has stated that on the polling day he and 30 or 50 other voters were taken to Banapur on a lorry, that they all got down at Venkappa Gadige's tea shop, that they took them all to the tea shop, that they were all given Chappatis and tea and that he did not pay any money for the tea and Chappatis and that they were all given slips of paper which contained a picture of yoked bullocks, the symbol of the Congress. There is no other evidence to corroborate the evidence of his witness. But, however, I am not inclined to disbelieve his evidence, for he has stood the cross-examination well. He has given the names of some persons that went with him. No witness has been examined on the side of the Respondent to disapprove the evidence of this witness.

27. The next place where tea and refreshments were given to the voters to induce them to vote for the Respondent is Yelburga. The allegation in this respect is that Adappa Hubballi and Anna Rao Udipl, who were the Canvassing agents of the Respondent, were giving tea to voters, on the polling day and sending them with instructions to vote for Congress candidates. This has been spoken to by a number of witnesses. The first is P.W. 134, Kalkappa. He has deposed that Chennappa Master went to him on the morning of the polling day and told him that tea and refreshments had been arranged in the tea shop of Anna Rao and Adappa and that he should come and take tea and vote for the Respondent and that, accordingly, he went to the hotel and took tea and that he saw others also taking tea there and that he was given a slip containing the picture of two oxen.

28. There is another witness who to this and he is P.W. 93, Chandangouda that at Yelburga Sekharagouda took him to a tea shop which could accommodate 25 persons at a time, that Sekharagouda appears to be a Police patel and it is stated by this witness that Chidamber Rao of Sanganal and Channappa Master were put up in his house. It is therefore clear that this Sekharagouda was a worker of the Congress and as such taking this Chandangouda for tea is to be regarded as by the Agent of the Respondent. These witnesses have stood the cross-examination fairly well and I do not see any grounds to reject their testimony.

29. The next witness that has spoken to this is P.W. 137, Basappa Laadi. He has stated that on the polling day, tea was being given to the voters and that this was arranged by Congress workers Vcerabhadrapa Nooli and Gurubasappa. This witness is no doubt a member of the Lokasevak Sangha. I am not inclined to reject his evidence merely on that score. He has given evidence in a straightforward and direct manner and he has stood the test of cross-examination well.

30. Two witnesses have been examined on the side of the Respondent to counteract the evidence of P.W. 137. One of them is R.W. 71, Venkatarao. He has stated that they have a hotel at Yelburga and that it is called Anna Rao Hotel, and that during the last general elections they had not been asked by anybody to arrange tea for the voters on behalf of the Congress candidates. This youngster does not seem to know much about Yelburga. He is not in a position to see how far Congress Office was from his house and he does not know if it had been written on the Congress Office "Vote for the Congress and vote for Basavanna, symbol of Congress". Further, this witness is not competent to speak, because it is his brother that runs the hotel. That is why he has stated that he does not know who paid the money and who drank on the polling day at his tea shop. It seems to me that this witness was not present at his hotel on the polling day.

31. The next witness is R.W. 86 Thirmal Rao. He is no doubt a man of status. He is a Pleader, though he does not know English. He has given evidence which is believable to some extent. He has no doubt denied that tea was arranged for voters at Yelburga on the polling day. But this statement of his does not seem to be credit worthy, for in the course of his evidence he has made some statements which are admittedly incorrect. For instance, he has stated that Bangarasetty Shankarappa was not present at the meetings addressed by Vali Chennappa, which is opposed to the reports appearing in the papers, like "Netaji" dated 8th March 1957; and reliable oral evidence on the side of the petitioner from which it is to be seen that Bangarasetty was with Vali Chennappa.

32. The next place at which arrangement for tea is alleged to have been made is Yerehanchinal. The allegation is that Mallappa Mardi of Yerehanchinal provided tea andiffin, etc., in the shops of Devappa Arali, Shivappa Kammathar and Shivappa Mandalgeri. The allegation is that this Mallappa Mardi gave money to Shivappa Kammathar and Shivappa-Mandalgeri and asked them to arrange for tea to voters on the polling day, that there were arrangements for tea at Yerehanchinal in three tea shops and that this was financed by Mallappa-Mardi who told the hotel-keepers to give tea free to voters and tell them to vote for the Respondent. He has further stated that he was taken that day by Nimmiasomaraddy to Shivappa Mandalgeri tea shop, that he got a plate of Vaggarane and a cup of tea and that there were many others taking tea in that shop, and that Nimmanna told him that he should vote for the Respondent and that he did not pay any money for the tea and Vaggarane given to him.

33. The other witness is Hotel-keeper and he has stated that Mallappa Mardi, Congress worker, asked him to give tea and Vaggarane to each person free, that he should keep an account and that he gave him Rs. 10 as advance. He has further stated that he would pay two annas for each person that was given tea and that on the next day, that is, the polling, Nimbanna was deputed to the shop to count

were with them and that he was sent for that he was told by the Respondents that he should give tea and Khara to any person that brought a chit, that he agreed and on the polling day he did like that and went to H. Venkatalakunte and took Rs 25 from Venkareddy. In his cross examination nothing has been elicited to discredit him. Thus we see that the evidence of these three witnesses goes to show that arrangements for tea and tiffin had been made. Madaladine on the polling day.

47 The next place at which arrangements for tea and refreshments are alleged to have been made is Hiresindog. The first witness that has spoken to this is PW 78 Venkappa. He has stated that he was a Congress worker at the time of the last General Elections and that he was also the polling agent of Mallakajunaguda, that on the polling day the agent of the Respondent gave Rs 25 to one Battappa and told him to give tea to persons that brought the hand bills containing the Congress symbol and that he should go on giving tea till Rs 25 were exhausted and that he would give more if necessary and accordingly tea was given to the voters and they were also given a plate of Khara. This witness was the polling agent of "Netaji". He has stated that he was distributing papers, like pamphlets and appeals. Such witnesses are called pseudo Congressmen by the learned advocate for the Respondent but still I am inclined to believe this witness for he has stood the cross examination fairly well.

48 It has to be observed that this Battappa has not been examined by the Respondent though he has examined two others. One of them is RW 60 Dekappa. He has stated that he was the polling agent of the Respondent at Hiresindog on the polling day during the last General Elections and he did not make any arrangements for tea and refreshments in the shop of D. Kappa and that he did not pay Rupees 25. The demeanour of this witness in the witness box was not satisfactory. The marginal notes show that he was pre-fabricating and as such his evidence cannot be accepted. This witness also has denied that arrangements for tea had been made in Padappa's tea shop. He says that he was the polling agent of the Respondent at Hiresindog. But the signatures on the polling forms seem to differ from the signature of this witness. He has no doubt filled the form, that is Ex R 78 and he has stated that 78(a) and R 78(b) are his signatures. It is doubtful whether this witness was really the polling agent of the Respondent because of this difference in signature. Further he has admitted that he is a relation of the Respondent.

49 The next place at which these arrangements were made or alleged to have been made is Koppal. This is spoken to by PW 79. He has stated that on the polling day he saw Mangalapur voters going to Koppal by Tehsildar Hussain agent of the Respondent, that he was in the house of Baba Sab that Hussain Sab had a handbill which was printed on red paper, that he then went to the hotel of Basappa and brought catables in a paper and also tea to Baba Sab's house and the voters were all given the same.

50 There is another witness that is, PW 68 Lingawwa. She belongs to Gimgera in Koppal taluk. She has stated that she was given tea and refreshments on the polling day. Something has been alleged against this witness to discredit her evidence, but I think that was long long ago and it is also unconnected with the Respondent and she could not have any grudge against the Respondent on that account. As regards the other witness it has to be stated that he has stood the cross examination well and that the only thing to be said against him is that he was asked to watch the movements of the Respondent's workers by petitioner. This thing is to be regarded more as a help than a hindrance to believe the evidence of this witness for he has been very frank.

51 The next place at which the arrangements for tea are alleged to have been made is Turuvehal and Sindanoor. There is some very reliable evidence in this respect. This is spoken to by PW 122 and 125. The former of this is an Advocate practising at Sindanoor and is no doubt a worker of the Loka Sevak Sangh but he is a witness who has spoken very clearly and frankly. He has stated that on the polling day during the last general elections he had gone to Turuvehal and in that place there was a tea-party going on in the house of Komati Venkanna that he went there and saw 40 or 50 persons taking tea and vaggarane that he asked them if it was a hotel that he was told that it was not but that they arranged it as per the desire of the Respondent and Basavanth Rao the Assembly candidate for the voters that he told them that they should not do all that that they retorted "How are you concerned" "They give and we arrange" that then he informed to the Patwari, that the patwari also came and enquired Venkanna, and

says that there was no Congress worker at Alvandi and no office and so on. I am therefore inclined to think that the allegation as regards the arrangements for tea at Alvandi is also true.

40. The next place at which it alleged tea and refreshments were given on the polling day is Mangaloor. The first witness that has spoken to this is P.W. 105, Shankarappa. He is a man of Mangaloor and he has stated that he went on the Lorry of Shankara Gouda Thagginamane to Bhairanayakan Halli to bring voters from there, that one Danappa, a worker of the Respondent, told him to do so, that he brought 30 or 40 voters and unloaded them in front of his village and that the lorry then went to Kuduremou, that the voters went to the house of Sannamangalappa where the congress office was situated and that there was arrangement for tea, etc. there. He has stood the cross-examination well and has given all details and I accept his evidence as true. He has stated that Shankaragouda Thagginamane himself was driving the lorry. This Shankaragouda Thagginamane has not been examined by the Respondent.

41. The other witness that has spoken to this is P.W. 18, Ncelappa and he has stated that the polling day he was at the house of Sannamangalappa, that the Congress office was locked, that he saw then one Danappa bringing voters and getting them tea at the back portion of the house and taking them to the polling booth. There is nothing in his cross-examination to discredit him.

42. No doubt the Respondent has examined one witness, to counteract the evidence of these two witnesses. He is R.W. 69, Kristachari. He is a Medical practitioner of Mangaloor. He admits that he was working for the Congress and that he was the polling agent of the Respondent in E.P. 258/57. He has further stated that there was no arrangement for tea and tiffin on the polling day. His evidence cannot be relied upon, because he has stated that Bangarasetty did not come with Dodmeti Andanappa and that he is a subscriber of "Thungabhadra" paper and the Geegi Mela Party did not come to Mangaloor, which is against the evidence of the other witnesses, as will be seen presently. His evidence on the whole appears to be very artificial and cannot be believed.

43. The next place at which the arrangements for tea and tiffin is alleged to have been made is Mudhol. The allegation with regard to this is this that Gadgigappa Desai of Mudhol provided tea and tiffin in one of his house, to the voters on the polling day. This has been spoken to by P.W. 60 Gurappa. This witness is the President of Samaja Sevak Sangha of Mudhol. He has stated that on the polling day tea was arranged at Gadgigappa Desai's house and Murmura was also served. This witness has given other valuable evidence like Valichennappa and Bangarasetty visiting his Samaj. In other words, he has also stood the cross-examination well and I am inclined to accept his evidence.

44. The next place at which tea and refreshments are alleged to have been arranged is Mattaladinne in Yelburga. Three witnesses from this place have been examined to speak to this affair. The first one is P.W. 113, Abdulla Sab. He has stated that on the day of polling, he has gone to cast his vote, that on the previous day he had been given two chits by the brother of Pundalikappa, the Assembly Congress candidate, that he went to Jambanna Gouda's tea shop, that he gave him a chit containing the picture of "Basavanna" and that Jambanna gave him a plate of Khara and a cup of tea and from there he went to the polling booth with the chit. He appears to be a plain speaking witness and he has stood the cross-examination well and as such appears to be a credible witness.

45. The next witness is P.W. 116 Yamanappa. He is a man of Mattaladinne. He has stated that Respondents have come to his village four days before polling and that people had gone to see them, that the leaders asked the people to vote for them, that then Pundalikappa, a candidate himself, told the villagers that arrangements for tea, etc., would be made on the polling day in Jambanna's hotel, that Jambanna was sent for and was told to give tea etc., that any person that brought the congress chits and that on the day previous to the polling, Pundalikappa's brother Kadirappa came and distributed chits and he was also given one and that next day he went to Jambanna's hotel with his two sons and took tea and voted. He has also stated that Jambanna was told that Venkareddy would give the money for the tea and refreshments supplied by him at Hirevonkalakunte and so the next day Jambanna took him to Hirevonkalakunte and that both of them went to Venkareddy and that Venkareddy gave Rs. 25 to Jambanna. This witness also has stood the cross-examination well.

46. The next witness is Jambanna. He is a man of Mattaladinne and he has stated that he owned the hotel at the time of the general elections and he has stated that the Respondents went to his village, that Pundalikappa and Venkareddy

were with them and that he was sent for, that he was told by the Respondents that he should give tea and Khara to any person that brought a chul, that he agreed and on the polling day he did like that and went to Hircvenkarakunte and took Rs 25 from Venkareddy. In his cross-examination nothing has been elicited to discredit him. Thus we see that the evidence of these three witnesses goes to show that arrangements for tea and tilin had been made at Mallaladinne on the polling day.

47. The next place at which arrangements for tea and refreshments are alleged to have been made is Hiresindogi. The first witness that has spoken to this is P.W. 78 Venkappa. He has stated that he was a Congress worker at the time of the last General Elections and that he was also a polling agent of Mallikarjunagouda, that on the polling day the agent of the Respondent gave Rs 25 to one Battappa and told him to give tea to persons that brought the hand bills containing the congress symbol and that he should go on giving tea till Rs 25 were exhausted and that he would give more if needed and accordingly tea was given to the voters and they were also given a plate of Khara. This witness was the polling agent of Mallikarjunagouda. He has stated that he was distributing parcels, like "Netaji", "Thungabhadra", pamphlets and appeals. Such witnesses are called pseudo-Congressmen by the learned advocate for the Respondent, but still I am inclined to believe this witness, for he has stood the cross-examination fairly well.

48. It has to be observed that this Battappa has not been examined by the Respondent though he has examined two others. One of them is R.W. 60, Dekappa. He has stated that he was the polling agent of the Respondent at Hiresindogi on the polling day during the last General Elections and he did not make any arrangements for tea and refreshments in the shop of Dekappa and that he did not pay Rupees 25. The demeanour of this witness in the witness box was not satisfactory. The marginal notes show that he was prefabricating and as such his evidence cannot be accepted. This witness also has denied that arrangements for tea had been made in Padappa's tea shop. He says that he was the polling agent of the Respondent at Hiresindogi. But the signatures on the polling forms seem to differ from the signature of this witness. He has no doubt filled the form, that is Ex. R 78 and he has stated that 78(a) and R. 78(b) are his signatures. It is doubtful whether this witness was really the polling agent of the Respondent because of this difference in signature. Further he has admitted that he is a relation of the Respondent.

49. The next place at which these arrangements were made or alleged to have been made is Koppal. This is spoken to by P.W. 5 Lingappa. He has stated that on the polling day he saw Mangalapur voters brought by Tongas to Koppal by Tehsildar Hussain, agent of the Respondent, that they all alighted in the house of Baba Sab, that Hussain Sab had a handbill which was printed on red paper, that he then went to the hotel of Basappa and brought eatables in a paper and also tea to Baba Sab's house and the voters were all given the same.

50. There is another witness, that is, P.W. 68, Lingawwa. She belongs to Gingera in Koppal taluk. She has stated that she was given tea and refreshments on the polling day. Something has been alleged against this witness to discredit her evidence, but I think that was long, long ago and it is also unconnected with the Respondent; and she could not have any grudge against the Respondent on that account. As regards the other witness it has to be stated that he has stood the cross-examination well and that the only thing to be said against him is that he was asked to watch the movements of the Respondent's workers by petitioner. This thing is to be regarded more as a help than a hindrance to believe the evidence of this witness for he has been very frank.

51. The next place at which the arrangements for tea are alleged to have been made is Turuvehaal and Sindanoor. There is some very reliable evidence in this respect. This is spoken to by P.W. 122 and 125. The former of this is an Advocate practising at Sindanoor and is no doubt a worker of the Loka Sevak Sangh, but he is a witness who has spoken very clearly and frankly. He has stated that on the polling day during the last general elections he had gone to Turuvehaal and in that place there was a tea-party going on in the house of Komati Venkanna, that he went there and saw 40 or 50 persons taking tea and vaggarane, that he asked them if it was a hotel, that he was told that it was not but that they arranged it as per the desire of the Respondent and Basavanth Rao, the Assembly candidate for the voters, that he told them that they should not do all that, that they retorted "How are you concerned". "They give and we arrange" that then he informed to the Patwari, that the patwari also came and enquired Venkaanna, and

that he too was given the same reply, that he then went to the Presiding Officer and informed him, that he told him that the arrangement was not within one hundred yards of the polling booth and so he could not do anything. He has also added that he was informed that there were such arrangements for tea elsewhere, but that he did not see. Clearly this witness is a very reliable witness and his evidence cannot be disbelieved at all.

52. The next witness that has spoken to this is P.W. 125, Manick Rao, Patwari of this place. He has corroborated the above witness in all particulars and as such the combined evidence of these witnesses leave no doubt in the matter.

53. From the evidence discussed above it is clear that there were arrangements for tea and refreshments in most of the places in the constituency and it is no exaggeration on the part of the petitioner to have stated that this practice was so widespread that it enveloped the entire constituency. There is evidence for such arrangements in some other places also, but it is unnecessary to consider it.

54. The next form of bribery that has to be discussed is the distribution of clothes. This has been spoken to by five or six witnesses and they are P.Ws. 36, 58, 81, 96 and 97. The first witness is P.W. 36, Balan Gouda of Talkal. He has stated that one Hanmawwa of Talkal is a Talwar and she is the Basavi of Hanmanth. Devaru temple, that she was given a sari and a kanna, that one day he had gone to Siddalinga Devaru Temple, which is his family deity and that Rudrawwa was in front of the temple as her duty is to sweep the temple, that Hanmawwa, the Basavi of Hanmantha Devaru temple spoken to above, had come there, that Rudrawwa asked Hanmawwa where she got the Saree she was wearing, as it was a new saree that she told her that the Congress people had given her saying that she should make the women of her village vote for the Congress. As already stated that this is witness whose testimony cannot be disbelieved.

55. The next witness is Veerabhadraiah of Kukkanoor. He has stated that the Respondent and the Respondent in E.P. 258/57 had come to his place 8 or 10 days before the polling, that they had come to the propaganda office that they sent for some villagers, that he was then sitting in tailor Ananthappa's shop in front of Congress Office and that the persons that had been sent for were Jeenena Vecrappa, Sangappa Mutigi and others that the Respondents sent Mutigi Sangappa to the shop of Rang Rao Desai to buy Khadi cloth, that he went and bought the same, that caps were got made, some pyjamas also were got prepared, that some dhodis were also bought and that they were all distributed and that shirts also were distributed to other persons. He also stated that he contacted one Rajavva for votes on behalf of Lok Sevak Sangha and that she told him that she has been given a Saree and a Kanna by the congress workers and that she had promised votes to them and that she could not oblige him. He has also stated that she showed the saree to him and that it was of Snuff colour and that the Kanna was of green colour. The evidence of this witness also cannot be disbelieved though he is a worker of the Loka Sevak Sangha, because he has given all the details.

56. The next witness is P.W. 81. He is a man of Amaravati, near Hospet. He has stated that Bellada Chennappa and Jolada Chennabasappa, the latter being the election agent of the respondent, had gone to his village to canvass votes for the congress party and that it was 4 to 6 days before the polling, that they canvassed for votes and that they asked him and others to vote for the Congress candidates, that accordingly, 7 or 8 of them went to Bellada Chennappa's house, that he was in his house then, that he asked them to give their votes to the congress, that he gave them coffee and Uppittu, that he gave the four persons that had gone with him a Gandhi Cap. Khadar Banian and a pair Nickers. He has also stated that the next day he took one Burmawwa and another Jambawwa, both Harijans to Bellada Chennappa, that then also they were given a saree and a Kuppasa each. He has stood the cross-examination well and appears to be a trustworthy witness.

57. The next witness is P.W. 97 Gangamma. She is a woman of Yelburga and she has stated that on the polling day the Congress workers Thirmularao, Raghvenderarao and Hanmantharao came to her house on the day of polling, that they asked her to go with her mother-in-law to the polling booth to vote for the Congress, that she hesitated that they promised her to give saree and a Kanna and so she and her mother-in-law went with the ladies of the visitors to the polling booth and voted. She has also added that the next day Shankara Gouda, Thirmularao and others came to her house and gave her a saree and a Kuppasa, which she showed to her husband and that her husband took objection and that she went and returned the same. Her husband, who has been examined as

P.W. 96 has corroborated his wife in all essential particulars. With regard to these witnesses, it has to be observed that Shankaragouda, the Respondent in E.P. 258/57 is a man who was known to this lady and as such it is not improbable that he gave a sarce and a Kanna to her.

58. More than all this Thirmal Rao spoken to by this witness and who has been examined as R.W. 86 has stated that in his place that is Yelburga taluks, clothes were distributed by the Congress party. The congress party must be regarded as the agent of the Respondent, because they had divided themselves into five parties for carrying on propaganda in favour of the Respondents. I do not think in view of this it is necessary for me to discuss the evidence of any other witness, examined for the Respondent.

59. There is also unimpeachable testimony in support of this allegation by way of documentary evidence. They are Exhibits P. 291 and P. 292. The first one shows that B. E. Ramiah, the Congress candidate from Siruguppa constituency purchased 15 dozen Gandhi caps on 2nd February, 1957. It cannot be said that these 180 caps were for his workers. The second of these Ex. 5 is a bill showing the purchase of 11 yards of Khadi cloth by B. E. Ramiah on 20th February, 1957. This B. E. Ramiah also has to be regarded as the agent of the Respondent because he has stated that he was asking for votes to the Respondent also. From this it is clear that the distribution of cloth complained of by the petitioner is also true.

60. The next form in which this corrupt practice of bribery was practised is alleged to have been committed by the distribution of cash. In this regard, the first allegation is that one Gadigappa Desai of Mudhol paid a sum of Rs. 300 to the voters of Bandihah who had to go to Thondahal to vote. This has been spoken to by P.W. 59 Gurulingannagouda of Bandihah. He has stated that Mudhol Desai Gadigappa came to his village on the polling day that he asked them to go to Thondihal and vote for Congress candidates, that they told him that if arrangements for repairs of the tank were made they would go and vote in favour of the Congress candidates and that he said that he would do so and went away. He has further stated that the same day at about 2 or 2.30 P.M. Gadigappa Desai sent one Basalinappa Inamati to call him, that he came there and took them to Thondihal polling station saying that they would be given money by Mudhol Desai, that they all went there, that there Gadigappa paid them Rs. 300 after bargaining and that they all voted afterwards. He has also stated that one Lingannagouda came and asked him about this and that he informed him all that had taken place. This Lingannagouda also has been examined as P.W. 16. He has stated that having heard that Bandihah voters took Rs. 300 and gave their votes, he went and asked Gurulingannagouda and that Gurulingannagouda admitted.

61. In this connection, the point arises whether this Gadigappa Desai can be regarded as an agent of the Respondent. No doubt, the respondent has denied that he was his agent, but there appears to be no doubt of Gadigappa Desai being his agent and worker. Gadigappa Desai has not been examined in this case, but there have been many reports which go to show that this Gadigappa Desai was actively engaged in working for the congress candidates, including the Respondent also. For instance, in a report in "Thungabhadra" dated 14th February, 1957 which is marked as Exhibit P. 48 (c), the name of Gadigappa Desai is mentioned and the heading of this article is "The meeting of the Congress workers". His name also appears in the reports of the Police Patel of Kukkanoor. In his report dated 4th February, 1957 marked as Ex.P. 303. It is stated that the Respondent had gone to Kukkanoor in his Jeep and with him were this Gadigappa Desai and others. Again in his report dated 15th February, 1957 he has stated that Anna Rao Ganamukhi, a Member of the Congress, came from the side of Mangaloor on a jeep and with him were Channappa Vail, this Gadigappa Desai and others. He had admittedly come for propaganda on behalf of congress. In his report dated 18th February, 1957 also it is stated that the Respondent went to Kukkanoor and that this Gadigappa Desai was in his jeep. Again in Netaji dated 14th February, 1957 there is an article in which it is stated that at Yelburga there was a big gathering of Congress workers and that this Gadigappa Desai presided over it. There is another oral evidence also to show that this Gadigappa Desai was taking every prominent part in the propaganda of Congress. I do not therefore think that in view of the definition of agent mentioned earlier there can be any doubt that this was the agent of the Respondent.

62. There is also another point which confirms the above view. It is admitted by the Respondent that he sent Rs. 1,000 to this Gadigappa Desai on 4th January, 1957 through his clerk and it is not stated why this sum was sent. It is clear that on 4th January, 1957 the election campaign had begun and when this amount of Rs. 1,000 was sent to Gadigappa Desai it must be presumed that it was in connection with the election. Taking all these circumstances into consideration, I feel no doubt that Gadigappa Desai was the agent of the Respondent.

63. As regards the allegations of some more instances of payment of actual cash, it has to be observed that they are small amounts and the evidence in that respect is not very clear and as such I do not think I need advert to them.

64. Then we come to the promises that the Respondent is said to have held out to electors for inducing them to give their votes to him. The first promise of this kind is said to have been made to the villagers of Konesagar. The allegation in this respect is that the respondent went to Konesagar a few days before the polling, that they sent for the villagers, that the villagers had gone to see them and that they asked them to give votes to them, that the villagers told them that if they got Dyamawwa's temple, which was dilapidated re-built, they would give their votes, that the respondent told them that the rebuilding of the temple would cost very much and that he would get the Gopura built at his cost in case the villagers voted for him, that the villagers agreed accordingly and the respondent went back. This is spoken to by P.W. 108 Shantappa and P.W. 112 Veerannagouda. They have stated that the Respondent and the Respondent in E.P. 258/57 came to their village 3 or 4 days before the polling, that they were in the Eswara temple and that they sent for the villagers and that they promised to construct the Gopura of Dyamawwa temple and they have also stated that the respondent said that the construction of the whole temple at their cost was too costly. On the whole, the evidence of these two witnesses goes to show that the Respondent made such a promise.

65. The next promise said to have been made by the respondent is in respect of the construction of school building at Kallur. In this regard one witness has been examined and he is P.W. 54 Kallappa. His evidence does not support the allegation of the petitioner, because he has stated that the Respondent did not say that he would get it completed at his cost but said that he would get it completed by using his influence.

66. The next promise that is alleged that the Respondent gave in order to induce the electors is in respect of a well at Bandi. It is stated that the respondent promised to construct a well for the Harijan at Bandi if the villagers gave them their votes and this is spoken to by P.W. 109 and P.W. 111. Their evidence is that the Respondents had come to his village about 8 days before the polling and that they were at the old customs house, that they sent for Desai and other prominent persons of the village, that Gouda Sanganna and Shankaragouda met them and were asked by them to give their votes to them, that the villagers asked them to have a well constructed for the Harijans and said that if they promise they would give their votes. They have also stated that the respondents agreed to have a well constructed at their cost provided we gave our votes. And he has further stated that the villagers agreed with them and that the Harijans also had come to vote. I am inclined to believe the evidence of these two witnesses in this respect, for they have stood the cross-examination well. Thus, we see this allegation also is proved.

67. The next form of bribery alleged against the respondent is entertaining the voters free of cost in order to induce them to give their votes. This entertainment is said to have taken place in two forms, one by Dramatic performances and another by arranging Geegimela Parties.

68. As regards the first, it is alleged that a drama called "Soubhagya Lakshmi" was got staged at Neera Manvi by the Respondent and that voters from many surrounding villages were taken there on lorries and got admitted to see the drama free. This is spoken to by P.W. 51 Talkal Rudriah. He has stated that a company from Harihar staged a Drama called "Soubhagya Lakshmi" and that at that time one Girdharlal sang some songs. He has not stated anything as regards the admission.

69. The next witness that has spoken to this is P.W. 66. He has spoken of having been taken on a Lorry to Neeramamvi where the drama by name "Soubhagya Lakshmi" was being enacted and where a Marwari sang songs. He belongs to a village, namely, Jyavalagere, which is said to be 8 or 9 leagues from

Neera Manvi. He has stated that he was taken there by Veerabhadrappa, Kulkarni. He has also stated that in the lorry in which he went there were 30 or 40 persons. He has further stated that he had been taken free on the lorry and that he was got admitted to the drama also free.

70. The next witness that has spoken to this affair is P.W. 65 Ayyanagouda. He has stated that 15 days before the polling a Jatra took place at Neera Manvi, that Mahadeva Kulkarni and Gurubasappa of Rahamatnal took him there on a lorry saying that the congress was getting a drama staged at the jatra and that they would bear his expenses and that he witnessed the drama there, that he did not give the hire of the lorry or the fee for attending the drama. It has no doubt been elicited from this witness that he helped the Congress in the last General Elections and as such it was suggested that he was a pseudo-congressman and not believable, but this witness has corroborated the previous witness in all essential particulars and stood the cross examination well and I do not see any grounds to disbelieve him.

71. It was argued that this jatra was outside the Koppal constituency and as such no note should be taken of it. I think this is not a tenable argument, for the voters from this constituency had been taken to a place though outside and offered free entertainment to induce these persons to vote for the respondent. As such, that entertainment also is a corrupt practice.

72. There is another witness who has spoken to this affair and that is P.W. 86 Veerabhadrappa. He has also corroborated the previous witnesses in all essential particulars and as such I have no hesitation in accepting the evidence of this witness.

73. The next drama that is alleged to have been got enacted by the Respondent is "Dattaputra" at Chikkavonkalakunte. This has been spoken to by P.W. 24 Sekhariah. He has stated that he had gone to Chikkavonkalakunte with P.W. 143 Veerabhadrappa, petitioner in E.P. 253/57 and that he attended the performance of the drama "Dattaputra" staged by Venkareddy's dramatic company and that the people of 10 or 12 villages round about had come there. The evidence of this witness has been corroborated by the evidence of P.W. 143 Veerabhadrappa. He has stated that he attended the drama without paying any fee.

74. There is yet another witness who has spoken to this. He has stated that he had gone to the Jatra at Chikkavonkalakunte at the time of the last general elections and there he attended the drama "Dattaputra" and that Venkareddy's company staged the drama and that he had gone to see the drama without a ticket and that when he went to buy a ticket one Kalliah told him that he need not buy the ticket and that he would get him admitted without a ticket.

75. The next place at which this same drama is said to have been enacted is Mangaloor. This has spoken to by P.W. 106, Lingangouda of Mangaloor. He has stated that this drama "Dattaputra" was enacted in his place some days before the polling during the last general elections and that he was taken there free by Venkareddy, Proprietor of the company that staged the drama.

76. The next witness that has spoken to this is P.W. 106, Lingangouda. He has stated that 8 days before the polling Venkareddy's dramatic company of Talikal had come to his place Mangaloor and staged the drama "Dattaputra" only 3 or 4 days before the polling, that he was taken there by Venkareddy and that with him Siddaramappa and Mallappa Sangouda had also come. It is clear from the evidence of these witnesses that they were taken there to attend the drama free. Thus we see that dramatic performances were also arranged free by the Respondent. The respondent has not attempted to disprove this. He has not examined even Venkareddy, the proprietor of the company, and who is also a Congress worker.

77. The next form of free entertainment is Gigi Mela parties. The Gigi Mela parties composed of three or four persons, one of whom carried a thumboori with them, used to recite ballads from some of the pamphlets that the respondent had given. The first witness that has spoken to this is P.W. 2, Kotrappa of Koppal. He has stated that there was a Gigi Mela show at Koppal 10 days before the polling at the time of the last general elections, that he attended the same, that it commenced at 8.30 or 9 p.m., that the show was in Kurubara Voni, that a platform was prepared, that lights were put up and that it had been arranged on behalf of the congress. He has further stated that Phakeerappa was singing songs. The evidence of this witness has been corroborated by P.W. 3, Nagappa, who also

belongs to Koppal. He has also stated that the Congress had arranged the show of Gigi Mela by the Byalahongal party, that there were about 500 spectators, that there was a platform, that on it were the members of the Gigi mela party and that Bangarasetty also was there. He has also stated that one of the member of the Gigi mela party was holding a book called "Congress Mahatme" and singing songs from that book and that he was explaining the same. This witness is corroborated by P.W. 2 in all respects and as such I do not see any reason why we should not believe them.

78. The next witness that has spoken to this is P.W. 53 Somarao. He has stated that the Gigi Mela party of Hebsur had come to his village at the time of the last general elections, that it had come four days before the election and that it had come on behalf of the respondent and that party sang songs written by Yelburga Master and that Guriah had brought the party. He has further stated that the party had come to Kukkanoor, that it came from Kukkanoor to his village. This witness is an ex-constable and I do not see sufficient grounds to disbelieve the evidence of this witness, for he has stood the cross-examination well.

79. The next witness is P.W. 82. He is Obappa of Hospet. He has stated that a Gigi Mela party had come to his place to do propaganda for congress. No doubt I have disbelieved the evidence of this witness in regard to tea and tiffin arrangement, but I am inclined to accept the evidence of this witness in this regard, for the respondent himself has admitted that he had engaged the services of the Gigi mela party.

80. The next witness is P.W. 56 Mallareddiappa. He has also spoken to the Gigi party of Hebsur coming to his village before the polling. He has also stated that it had come on behalf of Sanganna and Shankaragouda and that the party sang songs from Congress Mahatme. This witness has also stood the cross-examination well and I do not see sufficient reason to disbelieve him.

81. The next witness is P.W. 78. He is a man of Sindogi in Koppal taluk. He has stated that a Geegce Mela had come to his village 4 or 5 days before the polling and that it had come on behalf of the Congress and that it sang songs from congress Lavani etc. Though he is called a pseudo-congressman by the learned Advocate for the respondent, yet I am inclined to believe him as he has stood the cross-examination well. Similarly, P.W. 107, Mallappa has stated that 5 or 6 days prior to the polling (one Gigi Mela party had come from Hebsur and three days later another Geegi Mela Party which belonged to Ron had come there and that these Geegi Mela parties come on behalf of the Respondents, that the party sang the songs from Congress Mahatme Ex. P.79. He has further stated that on the second day, the second Geegi mela party gave their show there was a meeting, and that at the meeting Kadambari Bai and Bangarasetty spoke.

82. There is yet another witness who has spoken to this Geegi Mela. He is P.W. 139, Sekharappa. He has stated that Geegi Mela party had come from Gudur and that Rudra Sastry of Gudur had brought it and that Rudrasastry himself was singing the songs through a loud-speaker. He has further stated that he was singing songs printed in a pamphlet called "Congress Mahatme", that is Ex. P.79, and that he also was explaining the meaning of the block printed on the first page. This witness has spoken straightly and frankly and has given details and did not hesitate in the course of his evidence and as such I am inclined to accept his evidence. Thus, we can see from the evidence of these witnesses that four Geegi Mela parties were moving about in the constituency on behalf of the Respondent and they are of Byalahongala, Hebsur and Ron and Kudoor and not merely one as stated by the Respondent.

83. The next corrupt practice that has been alleged as having been practised by the respondent and/or his agents and/or persons interested in him, is undue influence. Undue influence, according to the Representation of the People Act, is "Any direct or indirect interference or attempt to interfere on the part of the candidate or his agent or of any other persons with the free exercise of any electoral right." It is further elaborated and stated that "Any such person as is referred to above who threatens any candidate or any elector or any person in whom a candidate or an elector is interested with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community or induces or attempts to induce a candidate or an elector to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure" can be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of

this clause. Thus undue influence includes not only physical injury but also pressure on the mental attitude of an elector. In this view, it includes a systematic appeal by a candidate or his agent or any other persons to vote or refrain from voting on grounds of caste, race, community or religion or the use of or appeal to religious symbols or the use of or appeal to national symbols such as the National Flag or the national emblem for the furtherance of that candidate's election. I would therefore consider the third and the fourth issues together.

84. The first instance of undue influence is alleged to be the threats offered to various persons by the Respondents' agents. The first of these threats is said to have been offered to one Kristappiah Pujari of Mandalhari, Yelburga taluk, by Kristappiah Desai of Murdi. The allegation in this respect is that Kristappiah Desai of Maradi Pattadar Patwari of 10 villages went to Kristappiah Pujari at Mandalhari and threatened him with the deprivation of his Pujarike in case he did not vote for the congress. This is spoken to by P.W. 28 Kristappiah Pujari. He has stated that 8 days before the polling when he was worshipping in the temple of Narsimha Duvaru at Mandalhari Kristappiah Desai of Murdi, Gurappa Kulkarni of Maradi and Gadaga Ragappiah and Kasirao Desai of Halligudi came to the temple, that Kristappiah then told him that he should give his vote to "Basavanna", that he told him that Kustigi Basetappa had come, that he had promised to give his vote to the "Cultivator Winnowing the Grains" and so he could not promise to give his vote to "Basavanna". He has further stated that he was then told by Kristappiah that he would be deprived of the Pujarike lands and would not allow him to live in the village. He has also stated that no one else was present. Though this is the only witness to speak to this affair, yet I am inclined to believe him, because he has stood the cross-examination well and the evidence of Kristappiah Desai who has been examined as R.W. 87, is anything but satisfactory. He is no doubt a big man with much landed properties and a Motor Car. He has no doubt denied that he offered any such threats to Kristappiah Pujari. His demeanour in the witness-box was anything but satisfactory. He was smiling whenever an inconvenient question was asked in the course of his cross-examination and sometimes he hesitated to give answers to questions. He has made statements which could not be believed, one such is that he did not entertain the Ex-Chief Minister Mr. Nijalingappa when he went to his village. He has got a photo taken with Mr. Nijalingappa and that Photo is Ex. P.195 and still he denied he was not in his house. For these reasons I am not inclined to accept the evidence of this witness.

85. The next instance of threat of physical injury is alleged to have occurred at Hirevonkalakunte. This has been spoken to by P.W. 24 and P.W. 143 Veerabhadrappa. The former of these witnesses is Sekhariah of Katarki. He is no doubt a worker of the Loka Sevak Sangha and was the polling agent of the petitioner. He has stated that he was going round the villages for canvassing and in the course of his peregrination he had gone to Hirevonkalakunte on 9th March, 1957, that when he went there a meeting was going on on behalf of the Congress, that Nallur Shivappa made a speech, that Kadambari Bai also made a speech, that Bangarasetty also spoke and that after that they all went away. He has further stated that that evening Veerabhadrappa P.W. 143 and petitioner in election petition No. 258 came there, that night, that they were arranging to hold a meeting, that then Bangarasetty, Etharajulu Naidu Shivabastva Sastry and Thagginamane Shankarappa came there with 20 or 25 persons who were drunk, that Thagginamane Shankarappa said addressing the audience, "You should not hear his speech and if you continue to sit you will get blows", that at this threat the audience melted away, though they were requested to stop and hear and that one Nagappa Bagali took away the petromax light, and that this incident created a feeling in the minds of these people that if they did anything contrary to the wishes of the interruptors, their lives would be difficult. The evidence of P.W. 143 is on the same lines and fully corroborates the evidence of this witness.

86. This has also been spoken to by P.W. 62, Hanmanthappa and P.W. 115, Balappa. The former of this has stated that he is the Secretary of the Vachanarayana at Adoor, that he was the Secretary even at the time of the last General Elections, that it is an honorary job and that on the day previous to the polling, he had gone to Hirevonkalakunte to see Doctor Kalliah Dyampur to whom he had to give some medicines which he had bought at Gadag and that he was sitting in the doctor's house at 8 p.m., that the doctor also was with him, that they then learnt that P.W. 143 Veerabhadrappa had come, that they then got up and came to a tea shop, that a meeting was about to begin, that they went there and stood, that in a minute about 20 or 30 persons came outside shouting "Veerabhadrappa died, Loka Seva Sangha Died", that they were all drunk, that the people that had

collected for the meeting got up and went away, that one of the persons carried away the light and another stopped the mike and the meeting closed and that he and Kaliiah returned home.

87. The other witness Balappa is a man of Mataladinne and he has stated that his village is only a mile from Hirevonkalakunte, that a day previous to the polling in the last general elections he had gone to Hirevonkalakunte to see the doctor, that the doctor was not in his house, that he was told that he had gone to a meeting in connection with the elections, that he went to the place of meeting, that P.W. 143 Veerabhadrappa had arranged a meeting and that the meeting did not take place, because of galata created by Shivabasaviah, Andaniah Kadirappa of that place. He has also stated that two persons from Koppal had come and that the persons that created the Galata were all drunk, that Dr. Kaliiah whom he had gone to see that day was also there. This witness has also corroborated the evidence of the previous witnesses in essential particulars and he has stood the cross-examination well. He is not a man who has got any grouse against any of these Congress workers or the Respondent. I am therefore inclined to accept his evidence as believable. Thus we see that there was hooliganism of the Congress workers at Hirevonkalakunte that night is also a fact.

88. The next threat that is said to have been offered is one given to a female voter by Kristappaiah Shanabhoga of Masabahanchinal that if she did not vote for the Congress, she will not be allowed to do otherwise. This is spoken to by P.W. 10, Shivabasavva of Nittali. She has stated that one Dharmappa and Kristappiah were working for the Congress and that the latter is the Shanbhoga of Masaba Hanchinhal, which is a mile from her village, that he had gone to her house on the day previous to the polling, that he then told her to vote for the Congress candidate, that he offered a hand-bill containing the symbol of a pair of bullocks, that she did not receive it because she had received the other symbol, that then the Shanbhoga got enraged and told her, "You are coming tomorrow to Masabahanchinal to give your vote. Let me see how you will vote" and went away. She has further stated that the next day, she went to Masabahanchinal to vote, that Kristappa Desai was there, that he told her that her name was not in the voters' list, and that she had no vote and that with her there were three more female voters, and the result was she could not vote at all that day. This is a woman who seems to be straight, frank and honest. She refused to accept even the Congress symbol and that shows her rectitude. She has given the names of the three other women that were with her. She cannot be accused of having any partiality for the petitioner and I am inclined to accept her evidence.

89. The next kind of corrupt practice resorted to by the Respondent is to bring about pressure on the mind of the electors. It is alleged that this was made in a variety of ways. The first one is said to be by way of appealing to the names of "Kalayana Basavanna". This has been spoken by as many as 35 to 40 witnesses. And I do not think it will be necessary to refer to the evidence of all these. The first of these witnesses is P.W. Kotrappa. He is a man of Koppal and as already stated he has spoken to having attended the performance of Gee Gee Mela party at which Phakecrappa sang songs. This witness has stated that Bangarasetty Shankarappa an agent of the Respondent, was there and that he was reading from a history of Basavannanavaruru, that he was saying that Congress was a organisation, that "Basavanna's" symbol should be given the votes and that Basavanna was giving food to the people.

90. The next witness is P.W. 7, Shankarappa. He also visited the Gee Gee Mela party referred to at Sindogi. He has stated that in his village Vankappa Ahuji and Basava Mandargi were working for the Congress that they were all distributing the issue of "Netaji" and "Thungabhadra", that they were saying that the symbol of the Congress was a pair of bullocks and that they were the same as Kalyana Basavanna, that he was the man who gives their desires and that if votes were not passed for him, he could not grow anything on their lands. As already stated, I see no grounds to disbelieve the evidence of this witness.

91. The next witness is P.W. 12, Gurupadaswami of Kalmangi, Sindhnoor taluk. He has spoken to a Congress meeting at Gangavati. He has stated that on 6th March 1957 he had gone to Gangavati to do propaganda on behalf of the petitioner, that there, near the bus stand, a meeting was held, that Kadambari Bai, Nellore Shivappa Dr. Nagangouda of Hospet and Bangarasetty were the speakers, that he went a little late, that when he went Nellore Shivappa was speaking, that he said that Congress symbol was Nandi, that Basavanna was Shiva's incarnation that he was Basavaraja, Basavarasa and so on. This witness has also spoken to a procession at Sindanoor. He has stated that there was a Congress procession at Sindanoor, that in a jeep behind the procession were sitting Tadkal Rudriah,

Bangarsetty and others, and that there was a loudspeaker installed in the jeep, that Tadkal Rudriah was telling people that Basavanna was the Congress symbol, that Basavanna was the Avatara of Nandi, that he was Basavaraja, Basava Prabhu, Basavarasa and so on, and that vote should therefore be given to the Congress. These utterances, he has further stated, were being alternatively made by Rudriah, and Bangarasetty. This is no doubt a worker of the Loka Sevak Sangha Party. But that fact should not come in the way of accepting his evidence. He has stated straightly and frankly.

92. The next witness is P.W. 17 Veeriah. This witness belongs to Gangavati. He has stated that there was a cart procession a week before the polling day, that in the procession there were some persons known to him, that there were Madhavarao, Chikkajantkal Kulkarni Devararao Anegondi, Byatappa Ranganti, Venkanna, B. Chennappa and others. The propagandists invoked the name of Basavanna, saying Basavanna was Basavarasa, Parshiva, Uddharaka and votes should be given to him and that this created a feeling in him that if he gave his vote to the Congress symbol it will do him good and that he believed in their cry that if votes were given to Basavanna he would get moksha otherwise sin. He is not member of any party. He is not attached either to the Respondent or the petitioner and he has stood the cross-examination well and I believe him.

93. The next witness is P.W. 60, Gurappa of Mudhol. He is the president of the Seva Samaj Sangha and he has stated that there was a meeting at Mudhol and that at that meeting it was said that Congress symbol was Basavanna and that vote should be given to it.

94. The next witness is P.W. 22, R. Veerareddy. He is a man of Gorebal and he has stated that there were writings on the walls of the buildings in his village, that the writings ran as follows:—"The symbol of the Congress is a pair of bullocks—Basavanna".

95. The next witness is P.W. 24 Sekhariah. He has stated that when he went to Hirevonkalakunte there was a Congress meeting going on, that Nelloor Shivappa was speaking, that his speech was as follows:—"Basavanna was Kalyana Basavanna, he was Nandi, he was Basava Prabhu. The Congress symbol is Basavanna. If you do not give votes to the Congress, you will be doing a sinful act. You will be doing Droha to Basavanna". As already stated, though the witness is a worker of Loka Sevak Sangha, I am not disinclined to believe him.

96. The next witness is P.W. 25 Yamanappa of Sindanoor. He is a cloth merchant of Sindanoor. He is not attached to any of the political parties. He has stated that various hand-bills were being distributed in his place and that in one of the hand-bills Ex. P.75 written by Goveradhanarao the ox was described as Shiva's mount and that it was the source of economic improvement, that it is source of the living of the Vokkaligaras and Négala Yogis. This description of the ox as Kalayana Basavanna, etc., made him inclined towards doing Dharma, that he should give his vote to Basavanna and that if he did not, he would not get salvation, but he would get sin.

97. The next witness is P.W. 37 Bhimareddappa. He has stated that he had got some pamphlets issued by the Congress and that it was Ex. P.75 and that the ox was there described as Basavanna and that he got an impression by reading this that Basavanna was equal to God.

98. The next witness is P.W. 51 Tadkal Rudriah. He was doing propaganda for the Congress and he has admitted that he was speaking during his propaganda as follows: "Basavanna was the source of living of the ryots, Basavanna was labouring for others, Basavanna was the same as Kalayana Basavanna". This admission on the part of this witness renders the reference to other witnesses unnecessary.

99. We have seen about that Bangarasetty, Talkal Rudriah and Nelloor Shivappa were referring to the name of Basavanna in the course of their speeches and that is enough. I would therefore go to the next point. Before going to the next point, I have to observe that it is not so much the contention of the respondent that bullocks were also called Basavanna. They did not seem to plead that bullocks were called Basavanna, in common parlance and that they use the name of Basavanna as it was in common parlance. In this connection, it will be very pertinent to refer to the evidence of a prominent witness on the side of the Respondent. He is R.W. 3, Ananthachar. He is an Advocate at Hospet and he is a seasoned Congressman. He has stated that in his view the Congress symbol ox is stated to be Nandi, Shiva's mount and that if it is put before the voters in

this form it will have a religious and communal appeal. He has also stated that he agrees that if in the election campaign the Congress symbol is connected with Shiva's mount Nandi, it amounts to a religious and communal appeal. He has further stated that worship of the Cow, Gomatha, his mother, is a religious ideal. It is therefore clear that this appeal in the name of Kalayana Basavanna is a corrupt practice.

100. There are other witnesses for the Respondent who have spoken on this matter and the first one is R.W. 24. He is Bellary Chennappa of Gangawati. He has stated that there was no bullock procession as such in Gangawati, that he admits that Kadambari Bai and Nalloor Shivappa had come and made speeches. This witness cannot be believed. He was hesitating to answer questions during the course of his cross-examination. Further, he has made statements which are intrinsically wrong.

101. The next witness is R.W. 25. The evidence of R.W. 25 is similar to R.W. 24 and cannot be believed. The evidence of R.W. 30 also cannot be believed as he was the polling agent at Kalmangi of the Respondent, but still he speaks to events at Koppal. Nalloor Shivappa has been examined as R.W. 63. He has no doubt denied that he made any reference to Kalayana Basavanna in his speeches. But no reliance can be placed on his evidence. He is supposed to be an atheist, perhaps just to show that he could not have made any reference to Kalayana Basavanna and the Gulbertain manner in which he gave evidence goes to show that he is an unscrupulous man who is prepared to do anything.

102. On the whole, I am inclined to think that this appeal to Kalayana Basavanna is true.

103. The next witness that has spoken to this appeal in the name of Basavanna is P.W. 61, Sekhariah. He has stated that he had gone to the shop of Veerabasaiah of Kukkanoor four days before the polling, that there he saw a procession, that in the procession there was a cart to which a pair of oxen had been tied, that there was a jeep behind and in the jeep were sitting Bangarasetty and Neelakantappa, vakil, that it was fitted with a loud-speaker, that through the loud-speaker they were saying, "Give votes to Kalayana Basavanna, Kalayana Basava, Basavarwar, Basavarasa, Basavaraja Prabhu and so on." He has also stated that there was a party of 7 or 8 persons in front, of whom one would ask the question "Vote for whom?" and another would answer Sangannanavarige" a third would ask "Vote for whom?" and another would answer "For Shankar Gouda": a fifth would ask "Vote for whom?" and another would answer "For Basavanna"; and they were going on like this in the form of questions and answers. This shows that the criers of the slogans equated the Respondents with Kalayana Basavanna and asked for votes.

104. The next witness that has spoken to this is P.W. 63, Pandit Sastry. He is a man of Javalgeri. He has stated that 4 or 5 days before the polling there was a meeting in his village, that Ron Shivappa had come and Talkal Rudriah also, that Talkal Rudriah spoke and that in his speech he said that if they voted for the Congress candidate they would be like voting for Kalayana Basavanna, that Congress is the organisation that has been blessed by Gandhiji. This is what Talkal Rudriah himself has admitted, and as such the evidence of this witness cannot be disbelieved.

105. The next witness is P.W. 65, Iyannagouda of Balaganoor, Sindanoor taluk. He has stated that he had gone to Neeramanvi Jatra, that the drama "Swabhagya Lakshmi" was staged there, that he witnesses that performance, that at the drama one Marwari Sang a song but that he could not understand it and that Talkal Rudriah translated it and then they understood it, that Talkal Rudriah said that Loka Seva Sangha was an organisation only two months old, that it had started to defraud people and swindle people of their money, that he could not do anything, that vote should be given to Basavanna, the pair of bullocks, that if they voted for Basavanna, they would prosper and get on, that Basavanna was the symbol of Agadi Sanganna, the Congress candidate. I have already stated that this is the witness who helped the Congress in the last elections, but the respondent calls him a pseudo-congressman. However, I think he is a believable witness, because he has stood the cross-examination well.

106. The next witness is P.W. 66 Balappa. This is also a witness who has spoken to the affair at Neeramanvi. He has stated that he had gone to Neeramanvi Jatra, that he attended the drama "Soubhagya Lakshmi", that on the stage one Marwari sang songs in Hindi, that he did not understand and that Rudriah said "Do not vote for Shivamurthi Swami. He has come only two days back. He is

not very old" and that votes should be given to the congress, that they should vote for Basavanna. Basavanna has come from Kalayana, etc. This witness has corroborated the previous witnesses in all essential particulars and as such I cannot but believe him.

107. The next witness is P.W. 35 Siddiah. He is a man from Yerehanchinal, Yelburga taluk. He has stated that Doddameti Andanappa had come to do propaganda on behalf of the respondent, that there was a meeting, that Myageri Desai was there, that the respondent in E.P. 258 Shankaragouda was there, that Mutgi Sangappa was there, that Doddameti Andanappa said in the meeting that votes should be given to the congress candidates only and not to any one else, that Congress symbol was Basavanna and that Vasavanna was the protector of the world, if you give to any other than Basavanna, you will become sinners." No doubt this is the witness who has spoken about Doddameti Andanappa referring to Basavanna, and no other witness has spoken to it. However, he seems to have stood the cross-examination well.

108. The next witness is P.W. 64 Sekharagouda. He is a man of Rahammatnail, Sindhanoor taluk. He has stated that he had gone to the Shandy at Balganoor, that it was the day prior to the polling at the time of the last general elections, that there was a procession going on, that there was a band set in front of the procession and that in front of it, some people were distributing hand-bills, and that there was a jeep in the procession, that in the jeep were Talkal Rudriah and Shankaragouda of Balaganoor and Nagappa, Gumsta of the respondent, and that these persons were saying "Vote for the congress! This is Shivana Vahana. You will get Punnaya if you vote for Basavanna".

109. The next witness is P.W. 138. This is a man of Challagere. He has stated that there was a procession of 101 bullocks in his place three days before the polling and he has stated that they asked for votes to Kalayana Basavanna and that Kalayana Basavanna was a Sharanar.

110. The next set of witness that has spoken to this kind of appeal have stated that there were wall paintings and these wall paintings ran as follows: Who votes to the congress gets Salvation, that if votes were given to the Respondent, Kalayana Basavanna will be pleased. This has been spoken to by P.W. 122, Srinivasarao a Practising Lawyer of Sindhnoor. He has stated that the writings on the walls appealing to the name of Basavanna are still to be seen on the walls of Meti Sharanagouda of Sindanoor. Similarly, P.W. 21, Shivalingiah of Mudhol stated that there were writings on the walls of houses of Mudhol and that those writings ran as follows: Give votes only for the Congress candidates, congress symbol is Basavanna and that such writings were on the wall of Gadigappa Desai's house. This is also to be gathered from the Photograph Ex. P.193 and P.194, which is a Photograph of the writing on the wall of Gadigappa Desai and there we see the writing is clearly an appeal in the name of Basavanna.

111. The next point in this respect to be considered is about the appeal in the name of Mahatma Gandhi, National Flag, National Emblem, influence of Mathadhipatis, influences of the Quoran, etc. As regards the appeal in the name of Mahatma Gandhi, there is plenty of evidence. The first witness that has spoken to this is P.W. 24 Sekhariah. He has stated that he had gone to Chikkavonkalakunte, that there Venkareddy of Talkal was staging a drama "Dattaputra" that on the platform there was placed a picture of Mahatma Gandhi with folded hands, that there was a table in front of that picture, that on the table there was a ballot-box, that there was a Congress symbol on the box, that after the drama was half over Bangarasetty came on the stage and said "Congress is an organisation which has laboured for many years. It is an organisation created by Mahatma Gandhi. You must give your votes to this organisation. You must be seeing Mahatma Gandhi asking for your votes." He has stated that the arrangements were so made as to create an impression in the minds of the people as though Gandhiji himself was asking for the votes on behalf of the congress and that people of 10 or 12 villages had come to see the drama. As already stated, though this is a worker of the Loka Sevak Sangha, his evidence cannot be disbelieved, because he has stood the cross-examination well and he has spoken in a straight and direct manner.

112. The next witness is Veerabhadrappa Sirur, the petitioner in E.P. 258/57. He has corroborated in all essential particulars the evidence of P.W. 24 and as such his evidence also is to be believed.

113. The next witness is P.W. 17, Eeriah. He is a man of Gangavati and he is unattached to any party. He speaks to a double bullock cart procession. He has stated on the cart was placed a chair, that on the chair a photo of Mahatma

Gandhi with folded hands was kept, that on the two sides of the carts two national flags, with Ashoka Chakra in them, were planted. This is a witness whose evidence cannot be rejected, because he was given all the details and all the names of persons who were present in the procession and he has also spoken of appeals being made in the name of Basavanna in the procession. He has gone further and said that on seeing this procession and Mahatma Gandhi's photo a feeling was created in him that if he gave his votes to the congress, it would do him good and that he believed in their cry that if votes were given to Basavanna, he would get Moksha, otherwise not. There is one thing to be mentioned with regard to this witness's evidence his reference to the Congress flag has not been referred in the cross-examination by the Respondent and as such we may take it that there were national flags planted on either side of Mahatma Gandhi's photo.

114. The next witness that has spoken is P.W. 25, Yamanappa. He is a man of Sindanoor. He has stated that there were many processions in Sindanoor before the polling, that hand-bills were distributed, that in one of the processions took place 15 days before the polling there was a double bullock cart, that in front of that cart was kept a chair, that on the chair was a photo of Mahatma Gandhi with folded hands, that there was also the national flag by the side of Gandhiji's photo, that there were 51 bullocks tied to the cart, and that there was a band playing in front of the oxen. He has also stated that in the second procession also there was a photo of Mahatma Gandhi with folded hands, that it was placed on a jeep. He has stated also that there was a national flag. He has added that the sight of the oxen made him feel that it would be giving vote to Kalayana Basavanna by giving it to the congress. He has also spoken of his having seen Ex. P.75 a pamphlet written by Goverdhanarao and he has stated that these pamphlets were distributed by the congress workers and that ox was described in the pamphlet as God's mount, Shiva's mount Nandi, that it was the servant of the economic improvement and that it is the source of the living of Vokkaligars, the Negala Yogis, and that this description of the ox made him inclined towards doing Dharma, that he should do dharma by voting for the congress. This witness also has stood the cross-examination well and I am inclined to accept his evidence, for there are so many other witnesses who have spoken to such processions.

115. The next witness is P.W. 26, Hanmanthrao of Sindanoor. He has also spoken to two processions at Sindanoor. The first was, according to him, about 20 days before the polling. He has stated that there were 51 bullocks in the procession in front and a cart was drawn by men behind and that in the cart there was Gandhi's photo and also national flag. In the second procession, according to him, there was only a jeep and in the jeep there was a photo of Mahatma Gandhi. He has also stood the cross-examination well and I do not see any reason why I should discard his evidence.

116. The next witness is P.W. 36 Balangouda. He has stated that there was a procession in his village Talkal two days before the polling, that ten or 12 pairs of bullocks had been tied to a cart and that in the cart was kept a chair, that on the chair was a picture of Mahatma Gandhi, that the picture was garlanded and in the right side of the picture there was a National flag and a band was playing in front. He has also spoken to the slogans that were being cried in front of the procession. According to him, the slogans were "Vote for the Congress. Congress symbol is Basavanna, Basavaprabhu. You must give vote to this Basavanna. He is Kalayana Basavanna, Nandi Avatar. Give vote to this man." It must be said with regard to this witness also that he has stood the cross-examination well and his evidence cannot be rejected.

117. The next witness is P.W. 45, Basalingappa of Karatgi. He has stated that during the last election there was a procession in his village, that it was a double bullock procession, that it was on an Amavasai day following Shivarathri, that the oxen had been decorated, that Hankattu had been tied to the oxen, that there was a Padaka in the Hanekattu and in the Padaka there was a National symbol of three Lions' Head, that there was a cart tied to the oxen, that on the cart there was a plank across that on the plank was a chair and that on the chair there was kept a photo of Mahatma Gandhi and that there were two national flags on either side of the photo to the back of the chair, and that there were some congressmen like Bangarasetty Talkal Rudriah and others with the procession. He has further stated that Bangarasetty, Rudriah and others were crying slogans and some others were crying distributing hand-bills, that the slogans were that "Basavanna was big. If votes are not given to him, sin will overtake them. The evidence of this witness also appears to me quite believable, for there is nothing in the cross-examination.

118. The next witness is P.W. 48 Hanmanthrao. He is also a man of Kartigi. He is a Homeopathic doctor. He speaks of a big procession at Kartigi. He has stated that in the procession there was a double bullock cart and that the oxen were decorated, that there were brass padakas on the foreheads, that there was a National emblem of Three Lions' Heads in the Padakas and that the Padakas were of the size of a Palm. He has further specifically stated that there were national flags on either side of Mahatma Gandhi's photo. He has also explained why he says they were national flags. His explanation is there was an Ashoka Chakra in those flags and not the spinning wheels which we see in the congress flags. Evidently, this is a witness who could distinguish between national flag and a congress flag. He has also spoken to the fact that copies of "Netaji" were distributed free and that some more hand-bills and pamphlets were distributed in his village.

119. The next witness that has spoken to this procession is P.W. 51 Tadkal Rudriah. As already seen above this was a congress worker and he has stated that there was a procession at Kartagi as stated by the previous witness. He has corroborated the evidence of these witnesses in all essential particulars. He has also stated that on either side of the picture of Mahatma Gandhi was a national flag, and copies of Exhibits P.75, 79, 80, 81 and 82 were being distributed at the time of the procession.

120. The next witness that has spoken to this is P.W. 12, Gurupadaswami. He is no doubt a worker of the Loka Sevak Sangha, but on that account only I cannot reject his evidence. He has spoken to the procession at Sindanoor and that in the procession there was a jeep and in the jeep was Mahatma Gandhi's photo.

121. The last witness that I would like to refer to in this connection is P.W. 106, Lingangouda of Mangaloor. He is the chairman of the village Panchayat and he has stated that he was invited to witness the drama "Dattaputra" by Venkareddy, that he went there, that on the stage was kept a table, that on the table there was a picture of Mahatma Gandhi standing and that in front of Gandhi's picture there was a box like the ballot box, that there was a curtain behind the picture, that in the curtain was a bust of Mahatma Gandhi with folded hands, that beneath that bust was written "Vote for the congress", that on the box there was a congress symbol of a pair of oxen, that the whole arrangements created an impression that Mahatma Gandhi himself was asking that votes be given to the congress candidates. This is a man who is unattached to either of the parties. He is the chairman of the village Panchayat. I do not see any reason why his evidence should not be accepted. It must also be observed that the Respondent has not examined this Venkareddy and that is another ground why I should accept the evidence of this witness. Thus, on the whole, I think there is enough evidence to show that Mahatma Gandhi's photo was used freely to influence the electors.

122. There is also Ex. P.83 which is a joint appeal by the Respondent in this petition and also the Respondent in E.P. 258 to voters for votes in their favour saying that they had the blessings of Gandhiji in standing for election.

123. The next point that has to be considered is the influence or religious heads that was enlisted by the Respondent. As regards this, it is alleged that at Sindhanoor the Kurubar Guru Siddiah came and sent for all his disciples in the neighbouring villages and took an oath from them touching his feet that they would all vote for the Congress. The first witness that has spoken to this is P.W. 22, Veerareddy of Gorebal, Sindhanoor taluk. He has stated that he had gone to Kurubaras to ask them their votes for the Loka Sevak Sangha and that he was then told that a promise had been taken by their Guru that they should all vote for the congress candidate and that this promise had been taken touching his feet and as such could not give their votes to Loka Sevak Sangh candidates.

124. The next witness is P.W. 50, Basavarajappa of Gorebal. He has stated that 10 or 12 days before the polling, the Kurubar Guru of Basavapatna by name Siddiah had come to Sindhanoor, that he was put up in the Matta of Gurubasaviyah, that then the Guru used to send for his disciples in the surrounding villages, that from his village Gorebal had come Nagappa, Lingappa, Jamba, Hircyappa and Mallappa, that the Guru told them of the elections to take place, and asked them, "The elections are to take place. What have you decided to do then?" They replied, "You are there. We are all going to act according to your advice." The Guru said "Basavantrao is standing for the Assembly and Sangananna the respondent, for the Parliament. They have brought me here. The Congress symbol is a pair of bullocks "they should put all their votes to the box bearing the symbol". The people that had come agreed to do so.

125. He has further stated that the Guru then said that it was not enough if they simply promised, that they should fall at his feet and promise and accordingly the people got up, one by one went to the Guru and fell at his feet and did Namaskaramas and promised that they would vote for the Congress. He has added that after all these had been done the Guru said that they had given the promise by touching his feet, that if they did not vote according to their promise. He has also stated that the Guru stopped only for 24 hours and went away. He has further stated that in the night that day 50 or 60 Kurubars of Sindhanoor had come and that they were also told similarly and that they also promised in the same way. He has also stated that at the time of departure one Bhangl Bhimanna said that his Guru says "Not only you will become sinners if you do not vote for the Congress, you will also be ex-communicated". This witness has also stood the cross-examination well, though he is a very young man. And I am inclined to accept his evidence. He was a boarder in that hotel then.

126. The next witness that has spoken to this is P.W. 70, Jambanna. He is a man of Gorebal. He has stated that he is a Kuruba, that their Guru belongs to Basavapatna, that he comes to their village now and then and that 8 or 10 days before the polling of the last General elections, he had come to Sindhanoor and sent word to them through a Talwar, that five persons went from Gorebal, that they went to their Guru who was put up in Gurusiddia's Matta and that the Guru told them that they should vote for the bullocks, and that they all agreed to do so. Then the Guru told them that since he would not believe their promise they should touch his feet and promise. So the witness has stated that they touched his feet and promised to vote. He has further stated that the Guru told them that they should tell other Kurubars also to vote for the symbol of bullocks. This witness has further stated that Veerareddy of his place had come to him to ask for votes to Shivamurthi Swami, the petitioner, and that he was told about the promise that they had given to the Guru. This witness also has stood the cross-examination well and I do not see any reason to discord his evidence.

127. The next witness is one P.W. 86, Veerabhadrappa. He is a man of Jalvalgeri. He has stated that he knows Basavapatna Siddiah, Guru of Kurubars, that he had sent for him, that he had gone there with 5 or 6 Kurubars, that Agadi Sangappa's i.e., Respondent's clerk Nagappa, had come to call him to Sindhanoor, that he went there, that the Guru was stopping at the Matta of Gurusiddiah, that when he and his companions went there, Gurubasaviah Basavaraja, and others were there, that they met the Guru, that the Guru told them as follows:—"I have given the promises to Congress to get the votes. You should all give your votes to Congress." Then he stated that all agreed to give votes to the Congress as per the desire of the Guru and that then the Guru said that he had no faith in mere words, that if they touched his feet and promised, he would have some faith, that, accordingly the Kurubars disciples touched his feet and said that they would obey him and that he then went back to his village. This is a man who is not attached to any Political party. He is a Patwari. He has stood the cross-examination well and I do not see sufficient grounds to disbelieve his evidence.

128. It must be stated that the Respondent has made some serious attempt to counteract the evidence in this regard. He has examined the Guru Siddiah himself. This Guru has been examined as R.W. 62. He has no doubt denied the testimony of his disciples referred to just now. It is rather difficult whether to believe this evidence or that of his disciples. But however, I am inclined to accept the testimony of his disciples in preference to his. Firstly, a number of his disciples have spoken as against the evidence of only this man. Secondly, he has admitted that one of the two Mutts buildings at Sindhanoor is let out and in the other there are Gaddiges of two or his deceased predecessors. Evidently, he cannot go and stop in that building where there are Gaddiges. This shows that he must go and stop at some other place if he comes to Sindhanoor. I think it is on account of this difficulty that this witness has stated that he did not visit Sindhanoor at all.

129. There are other witnesses also who have come and stated that this Guru did not come at all to Sindhanoor during the time of the last general elections. The first of this is R.W. 30, Reviah. He has stated that he is an active Congress member and a Municipal Councillor of Sindhanoor. He has stated that he knows the Kurubar Guru and that he does not stay in Lingayat Mattas, that he does not get good treatment there and that he did not come during the last general

elections. He has however admitted that Gurusiddappa's Matta is given to Government for running a Hostel and this lend support to the petitioner's side evidence. Further the statement of this witness that P.W. 51, Talakal Rudriah was doing propaganda for the petitioner is unbelievable. And so it vitiates the entire evidence. Further he appears to be the companion of Vasantha Rao, the Assembly Congress candidate from Sindhanoor.

130. The next witness is R.W. 40 Rangappa. He is a man of Gorebal. He has stated that he has not seen the Guru of Kurubars and that as far as he knows the Guru had not stopped at Gurusiddiah's Mutt. He, however, admits that there is a hostel in Gurusiddiah's Mutt and that Basavarajappa, P.W. 50 used to be at Sindhanoor for going to School, but that he does not know if he used to be in this hostel. It is clear that the evidence of this witness is too artificial to be believed. He has also stated that Talakal Rudriah voted for the Loka Sevak Sangh candidate from the Sindhanoor Constituency and as such he is not to be believed. Further, he is a man who had a conviction in a criminal case and was sentenced to one year's rigorous imprisonment. Certainly, the evidence of this witness cannot be accepted at all. The evidence of R.W. 41, Bhangl Bheemappa, a resident of Sindhanoor and a Kurubar, boot, is that the Guru of Kurubars had come at all during the last elections. His evidence cannot be accepted, because he is the brother of Angadi Bhangl Bheemanna, associate of Vasantha Rao and is a Secretary of the Congress. He says that there is no objection for the Guru to come within three years and admits there is a hostel in Gurusiddiah's Mutt. So, taken as a whole, I am inclined to think that this allegation about the influence of Siddiah, the Guru of the Kurubars, on the electors is true and cannot be disbelieved.

131. Similarly, the evidence of R.W. 41, Bheemappa who has stated that the Guru of the Kurubars did not come at all to Sindhanoor during the last elections cannot be accepted, for he also appears to be an interested witness.

132. Thus, we come to the next instance of the influence of religious heads, namely, of the Swami of Uruvakonda Mutt. It is enough to state in this regard that there is only evidence to show that Uruvakonda Mutt Swami had come to Bellary and that he asked one gentleman P.W. 95, Maharudriah to canvass for Congress and vote for the respondent. Though he has stated that the Uruvakonda Swami was doing propaganda on behalf of Agadi Sanganna, he has not given any specific instance of such propaganda. It is enough to state that there is not much evidence in this respect.

133. The other instance alleged is the influence of Gokarnada Mutt Swami. Even in this regard, there is not much evidence though admittedly the respondent has given this Mutt a sum of Rs. 11 as Kanika. The amount seems to be too small for any help that the Swami might have rendered in connection with the elections. I am, therefore, inclined to think that there is not much evidence even in this respect. No doubt one witness for the petitioner P.W. 14, Pattadiah has spoken to this and that is not enough.

134. Then we come to the influence of the Mohammedan population of the constituency. The allegation is that one Abdulla Khan of Koppal and another, Papiah Razakar of Kukkanoor seem to have gone to various places where there were Mohammedans, and to gather them at the Mosque and make them promise on the Quoran that they would vote for the Congress. It is also alleged that pamphlets and handbills issued by Hafiz-ur-Rehman, President of the Jamiat-ul-Ulema Hind, were being freely distributed and that these pamphlets brought about a change in the attitude of the Mohammedan voters.

135. The first witness that has spoken to this is P.W. 27, Raja Sab of Kowloor. He has stated that Abdulla Khan of Koppal came to Kowloor and gathered the Muslims at the Masjid and asked the Muslims to swear on the Quoran that they would vote for the Congress and that they did so. He has also stated that some of them objected to that procedure and that they were told that trouble would be caused and that they should all vote for the Congress, and that they should swear on the Quoran to give their votes. He has also stated that accordingly a copy of the Quoran was brought and touching it they all promised to give their votes to the Congress candidates, that is the respondent. This witness has stood the cross-examination well and appear to be an unsophisticated witness and I accept his evidence.

136. The next witness is P.W. 47, Mullick Sab. He has stated that one Abdulla Khan Sab of Koppal had come to Yelburga 3 or 4 days before the polling,

that with him had come Kukkanoor Papanna, Bannikatte Imam Sab and Dyampur Hussain Sab and that they had all come at about 1-30 P.M. that he was sent for, that one Khadar Sab had come to call him, that he told him that Kukkanoor Papanna was in the Masjid, that he wanted him and that he went there, that there already about 50 persons had gathered, that there were Hussain Sab, Pothana, Hussain Sab Gadag and others. He has further stated that after he went Papanna spoke and said that the Respondent and Shankara Gowda were standing as candidates for election, that the vote should be given to them, that the Congress was running the Government, that they should prosper by them. He had added that they all agreed to do so, but Papanna of Kukkanoor was not satisfied. It seems he said that oral promise was not enough and that they should touch the Quoran and promise and that, therefore, they all touched the Quoran and promised that they would give their votes to the Congress candidates. This witness has given the names of all the persons that had gathered there and as such I do not see any reason why he should be disbelieved.

137. The next witness that has spoken about this is P.W. 18, Obeleshappa. He has merely stated that he was told by two Muslim members of the Labour Union at Hospet that they were made to promise on the Quoran that they would vote for the Congress and also that they were threatened with expulsion to Pakistan in case they did not vote. This is mere hearsay and much value cannot be attached to it.

138. The next witness that has spoken to this is P.W. 58, Veerabhadraiah. He has stated that he knows Imam Sab Bannikatte of his village, that he gathered 10 or 15 local Muslims in the Masjid in the Bazaar of Kukkanoor, that he told them that their votes should be given to Sanganna and Shankara Gowda, the respondent, and took a promise from them all that they would vote for them, that he had gone to Bannikatte Imam Sab to ask for votes to Loka Sevak Sangh candidates, that he then told him that they had decided to vote for Congress candidates that they had taken an oath and so they cannot vote for the Loka Sevak Sangh candidates. This is also a hearsay evidence and it is not of much value. Yet I am inclined to accept it in view of the evidence that Bannikatte Imam Sab was present at Kukkanoor meeting spoken to above.

139. The next witness that has spoken to this is P.W. 98, Mallappa. He has stated that 10 or 15 days before the polling, he had gone to the shandy at Kukkanoor that then at the Masjid there was a meeting of the Muslims that opposite to the Masjid was a tea shop, that he sat in that tea shop, that there also is a shop of Imam Sab Bannikatte, that one Peer Sab and Dastagir Sab of his place came out of the Masjid, that Mardan Sab of Talakal Imam Sab Bannikatte, Jalar Sab Bannikatte also came out, that he asked Peer Sab why he had come, that he then told him that there was a meeting convened, that Abdulla Khan Sab of Koppal also had come and that in the meeting they were asked to vote for the Congress candidates, that they had taken promise on the Holy Quoran, that they would vote for the Congress and that then they went to his village.

140. The next witness that has spoken to this affair is P.W. 13, Rudhiah. He has stated that Abdulla Khan of Koppal had come 4 or 5 days before polling, that he was sitting in the Masjid of the village, that he saw the Mohammedan voters and that on seeing them he sat there alone, that after an hour they all came out, that there was one Raja Sab among them, that he knew him, that he called him; that then he told him that Abdulla Khan had called them all and that he told them all to give their votes to the respondent, that they had taken a promise from them all on the Quoran and this confirms the evidence of P.W. 27, Raja Sab referred to above.

141. There is also a lot of evidence on the side of the respondent and most of it refers to the alleged taking of promise on Quoran at Siriguppa, Thelkalkote. After all, that evidence cannot be considered to counteract the evidence regarding such promises being taken in Yelburga and Sindnoor taluks. So on the whole, I am inclined to believe that such action must have been taken against the Muslim voters in view of the fact that Ex. P. 64, 65, 66 and 67, appeals issued by Hafizur-Rehman, President of the Jamiat-ul-Ulema, are admitted to have been got printed by the respondents and distributed among the Muslims population of the constituency.

142. It remains to consider the pamphlets issued to influence the Hindu population. These pamphlets are Ex. P. 75, 110, 79, 77 and 80. I would like to take for consideration Ex. P. 79, P. 77 and P. 80, Congress Mahatma, Congress Padyavali and Congress Lavani, respectively. There is a common block on all these

pamphlets. It is alleged that this block influenced the Hindu voters to a very great extent for they all affected the religious feelings of the voters. The explanation of these blocks has been given by P.W. 52 and that explanation is said to have been from the mouth of Channappa Master, the author of these pamphlets. According to that explanation, the block shows the earth, the earth is standing on "OM", on "OM" there are the pictures of Gandhi, Nehru and Patel. Gandhi is called Brahma, Nehru is called Vishnu and Patel is called Rudra. In the middle of this earth, right across is shown Jalahari, above this Jalahari is the picture of Bharat Mata, on the top of Bharat Mata is Tripundra, in the middle of Tripundra is the Urigannu of Ishwara, to the left is the moon, below the earth and in "OM" is written Vandematram in Devanagari. He has further stated that the picture of Bharat Mata in Ex. P. 79 evokes an adoration to India, his mother, that the block in Ex. P. 79(a) indicates that if votes are given against the Congress such voters will be sinners, they will incur displeasure of Gandhiji, Nehru and Patel, that on the other hand, if they give their votes to the Congress, they will be satisfying Gandhiji, Nehru and Patel and also get punya; that if a man does sin he will go to hell and that if he gets punya he will go to heaven. In Ex. P. 79 at page 14, it is said that if votes are given to the Congress, they will be protected by Gnanamurti, one of the Gods. This is the explanation of the block coming from the mouth of the author of these pamphlets and as such it is unnecessary to consider in detail about that block. It is enough to state that the influence of such a block on the ignorant electors will be immense, and that they will be led away to vote for the candidate that had issued these. It is in evidence that these pamphlets were distributed throughout the constituency and it was easy to imagine the extent of the influence that these have made on the electors. I am inclined to think that these pamphlets appeal to the religion and as such I must hold that these fall within the mischief of clause (4) of Section 123 of the Representation of the People Act.

143. There is yet another subtle form of undue influence practised by the respondent or his agent and that is Ex. P. 117. This is an appeal made by the respondent to the Yelburga voters. In this appeal there are the names of many persons printed underneath. Out of these signatories, it is alleged that seven are the workers of the Loka Sevak Sangh. These names have been included just to make the electors believe that these persons also are against the Loka Sevak Sangh party. This has been spoken to by two witnesses, P.Ws. 136 and 133. The first of these witnesses has stated that his name is found in the appeal, Ex. P. 117, that he had not given his permission for his name to be included in that appeal and that by this inclusion the voters began to be suspicious about his activities. The other witness is P.W. 131, Basana Gowda of Yelburga. He has stated that his name also is in the list in Ex. P. 117, that he is a worker of Loka Sevak Sangh, that his name had been included unauthorisedly, that he did not give his consent; that he brought this to the notice of Shankara Gowda, the Respondent in Ex. P. 258/57 and that he promised to delete his name in the next print. The mischief was done and it was unnecessary to delete it. Evidently the respondents did not get another reprint made. If they had done so, they would have certainly put it before this Tribunal. Thus, the respondents have tried to bring undue influence on the voters in this way also.

144. There is still another form in which undue influence has been sought to be brought about on the minds of the electors. This has been spoken to by the Petitioner who has complained that there was a writing on the wall of Venkataramanaswami temple at Koppal and that the writing ran as follows: "There is place only for the Congress here. To Congress vote, for others boot." By the side of the word 'Boot' there is a drawing of shoe, underneath the shoe is the head of the petitioner and he is described as 'Swami'. In this regard, there does not appear to be any doubt, for a photograph of the writing was taken and it has been produced and marked as Ex. P. 89, and it is in evidence that this was written by one Agnihotri Anantachar, a worker of the respondent.

145. That this writing was done by Agnihotri Anantachar has been spoken to by P.W. 4, Venkanna of Bhagyanagar. He has stated that he had gone one night to the house of Dr. Mangesh Rao for medicine, that that house is by the side of the Venkataramanaswami temple, that on the front wall of this temple Agnihotri Anantachar was painting something, that he had paint in one hand and in another he had a brush, that he had painted a picture on the wall, above the picture was written 'Congressige votu, Ittararige Bottu', beneath that boot was a bust, there was a cap on the head of the bust that beneath the bust was written 'Swami' and that writing on the wall was like Ex. P. 89. This witness has stood the cross-examination well and he has stated that with Anantachar there was

another person who was holding a lantern in his hand and that he does not know the name of the other person

146. Though there is some doubt as regards the credibility of this witness, yet in view of the fact that Anantachar is said to have confessed before one Raja Sab, P.W. 27 of Kowloor when he questioned Anantachar why he had done like that. I am inclined to believe him. He has stated that Anantachar told him that a big man had asked him to do so he did it. I am inclined to accept that this Anantachar should have given out the name of the Respondent and also I am inclined to believe his alleged confession. This Anantachar has been examined as R.W. 9. His demeanour in the box was rather Gilbertian and he did not seem to be very serious in what he was saying. His father was a Congress worker. This young man professes to be a Jana Sangha Member. Whatever that is his evidence does not appear to be reliable. I must also refer here to the inspection I made on the wall on which this writing has been alleged to have been made. It was contended by the respondent that the photograph Ex. P. 89 was not that of the wall of Venkataramanaswami temple, because there were some small blocks of stones which really the wall did not possess. I inspected the spot in the company of the respondent and his advocate and I have made a note of the State of things there and I have no doubt that the photograph represents correctly the wall on which the writing is alleged to have been made. Thus we see that all sorts of undue influences have been brought to bear on the electors in order to induce them to vote in favour of the respondent and against the petitioner.

147. Here it may not be out of place to refer to the supposed promise made by Mr. Karmarkar. It is alleged that Mr. Karmarkar who had come on a tour of propaganda on behalf of respondent made a promise to the merchants of Koppal that if they voted for the Congress candidate he would arrange to help them to get license to export, etc. Mr. Karmarkar has been examined on Commission and he has denied and I accept his denial as correct.

148. It was contended by the learned advocate for the respondent that Agni-hotri's confession should not be taken into consideration as he had ceased to be an agent of respondent when he confessed. I am not inclined to agree with him for it is the painting there that is the act that caused undue influence and not the confession. It was also contended by the learned advocate that the appeal of Hafizur-Rehman cannot be considered as having exerted any undue influence for the simple reason that there was no compulsion in these appeals. This may be true but when the promise was taken from the electors by making them touch the Quoran the undue influence arose. These appeals were distributed among those electors who touched the Quoran and promised and as such these pamphlets, Ex. P. 64, 65, 66 and 67 should also be considered as having exerted undue influence.

149. The next corrupt practice that is alleged to have been committed by the respondent and his agents is the publication of false statements. This publication is said to be both documentary and oral. As regards the former, it is stated that the publication of false statements was got made in 'Thungabhadra', a weekly published in Koppal and 'Netaji' a daily published at the time of the elections at Gadag and 'Swatantra' another weekly published at Koppal. The oral publication is said to have been made by some of the canvassing agents of the respondent in the speeches delivered by them at various places.

150. We may take up first for consideration the publication in the weekly 'Thungabhadra'. It is stated that in the issue dated 3rd January 1957 of this paper 'Thungabhadra' a report was published over the name of the staff correspondent of the paper to the effect that the petitioner behaved superciliously and arrogantly towards a graduate teacher who had gone to see him. It is also alleged that the effect of this publication was to render them hostile towards the petitioner. In the same issue, it is stated at the same page that the said paper has published over the name of the staff correspondent that the petitioner had ordered his followers to patronise the goondas to carry on violent activities against the Congress workers. Again, it is stated that in the same issue at page 6 an article is published over the name of the staff correspondent under the caption 'that the petitioner has started murdering personalities in the name of his principle in which a number of allegations regarding the personal character of the petitioner are made at page 6 and again in the same issue it is alleged that at page 7 over the name of the staff correspondent it has been published that the petitioner has been collecting and extracting moneys from the people and so they are avoiding him.

151. This issue of 'Thungabhadra' has been marked as Ex. P. 51 and at page 5 there is an article marked Ex. P. 51(e) under the caption 'Sri Shivamoorthi Swami's courtesy' towards teachers. It is stated there that Sri Shivamoorthi Swami was put up in the Razakar Bhavan at Koppal; that then he was surrounded by his henchmen; that then a graduate teacher came and wished the Swami with folded hands, but that Sri Shivamoorthi Swami did not return the wish; that he did not get up even and that he did not look at the teacher and was listening to his henchmen. It is further stated that the teacher was not spoken to even he sat for hours, that he was not enquired even as to why he had come. It is also added that at the end when Sri Shivamoorthi Swamy and others were asked to get up and go for food, Shivamoorthi Swami got up and passed before his teacher but did not speak to him. Finally it is stated that the teacher went away saying that he made a mistake in visiting Sri Shivamoorthi Swamy. The petitioner has denied this. There is no evidence on the side of the respondent to show that this incident had got a particle of truth even.

152 It cannot be denied that the implication of this article is not only wicked but also harmful to the furtherance of the election of the petitioner. The teachers form a very important portion of the electors and they can either harm or help the election of any candidate. As such I think this publication of the false statement by Bangarashetty, the Editor of 'Thungabhadra' about whose relation with the respondent there would be discussion presently amounts to a corrupt practice.

153 Again in the same page and below the above article it is stated that Shri Shivamoorthi Swamy, the Petitioner, having collected the followers had instructed them that they should gather the goondas and hooligans then alone. There is no doubt that this is also a statement affecting the personal character of the petitioner and there is also no doubt that this would affect the election prospects of the petitioner.

154. Again in the same issue at page 6 there is a very big article under the caption- "That Sri Shivamoorthi Swamy had murdered personalities in the name of his principles". This is a very long article and it is enough to state only some extracts. It is stated in this article that the petitioner was so unscrupulous as to throw aside his parents, even relations and friends if they come between him and the moneys that he wanted; that the petitioner has no compassion, no intellect, no gratitude, no love, no forgiveness, no liberalism, no spirit of sacrifice, in fact, no virtue at all and that, in short he is not a human being. Further, it is stated that he does not respect the other religionists; that he is unfit to utter the name of Bhagwan Basavanna; that his soul has become deprived and that his diabolical powers have been biting all alike like serpents. This is a short summary of the allegations made in this long article.

155. Again, in the same issue, at page 7, there is an other article over the name of the staff correspondent under the caption 'Struggle for moneys'. This article is marked Ex. P. 51(f). It is stated in this that Sri Shivamoorthi Swamy, the petitioner, has been tired of some persons who have no money and who have no honesty but who want to stand for election; that the petitioner is asking for money from all people wherever he goes and that they did not give any money to him. It is further stated that the candidates whom he is going to put up had to sell away their lands. Further, it is stated that whatever may be, one task of the petitioner has been to extract money from whatever persons he visits and as such many persons are avoiding him. All these allegations are denied by the respondent and it cannot be denied that the suggestions made in this article are wicked and highly mischievous and are such as to jeopardise the prospects of the petitioner's election.

156. The next issue of this paper in which false statements are alleged to have been made is the issue of 7th February 1957. This article is marked Ex. P. 52(b) and it is the editorial. I must say that this beats all records in regard to the nature of venom, vilification and vituperation. This is also a very long article and it is enough to give a short summary of the allegations made. The allegations are that the petitioner has been cheating the people that he has sown the seed of communal discord between Brahmins and Lingayets at Gangavati and between Hindus and Muslims at Raichur and in a particular family at Sindnoor. It is further alleged that he has deserted his party candidate for the Assembly at Sindnoor; that he has forcibly put up a candidate at Kushtagi; that he has taken moneys from the richmen from Sindnoor and put him as a candidate; that his candidate for the Koppal Parliamentary constituency is a moral mistake; that he has secretly made alliance with the Congress and the P.S.P. and has deserted

the candidates of his own party; that he has been dressing himself as a Congress-man and deceiving the unsophisticated; that he expects the unknowing people to fall at his feet; that he is a repository of communal virus; that he is vain, deceitful, cunning, avaricious, etc., that he has misappropriated the funds of the Akarani Parishad and the Loka Sevak Sangh Conference held at Gadag.

157. Among the witnesses, the names of a few only need be mentioned. One of them is P.W. 120 Dombal Somappa. He has stated that he knows the petitioner from his college days; that he is closely moving with him and that he has none of the qualities that the above articles mentioned. He is a practising advocate at Koppal and the manner in which he has given evidence goes to show that he is a straight man and an honest man and his certificate about the character of the petitioner cannot be rejected. Then another witness is P.W. 122, Srinivasa Rao. He is also an advocate practising at Sindneor. He has stated that the allegations made against the petitioner in the above articles are all false and that these articles have damaged the prospects of the petitioner's election and also damaged the prospects of the election of the other candidates of the Loka Sevak Sangh party. Especially, he has denied that the petitioner is the fomentor of communal troubles and he has also stated that he went to Raichur and enquired the advocates there that if there was any communal tension there between Hindus and Mohammedans at Raichur and that they all said with one voice that there was no such differences between the two communities. He has denied the other allegations also and as such I do not think it necessary to consider the evidence of other witnesses who have spoken to this affair. The other witness that has spoken well about the petitioner's character is P.W. 35, Vali Channappa, a man who did propaganda for the respondent.

158. The next article that is complained of by the petitioner is in the issue of 'Thungabhadra' dated 3rd January 1957. In this issue an article is published over the signature of his staff correspondent under the caption 'Shri Shivamoorthiswamy's secret came out'. In this article, it is published thus; Many people might have seen the photograph in which the President Rajendra Prasad and Sri Shivamoorthiswamy are standing together; that it is not true that as indicated in the photo, the President did stand and get a photo taken; that photo was taken when many members of Parliament had assembled; that they all stood with the President and took the photographs; that Sri Shivamoorthiswamy also was one of them; that then Sri Shivamoorthiswamy arranged for a photo being prepared in which only the President and he were made to stand and this was done by a photographer by his hand work (trick photography) and that he prepared copies thereof and that the petitioner was distributing those photos among his disciples by way of 'Prasada'. This is a thing which passed my comprehension.

159. The learned advocate for the respondent drew my attention to the fact of a hand being visible in the photograph on the right side of the President. It must be stated that this hand is not very clear. Even granting that this hand was there, it does not exclude the possibility of the President and the petitioner standing together and having a photograph taken. No expert witness has been examined on the side of the respondent to show that such a photography is possible and as such I cannot but accept that this publication is false. There were many other articles in many other issues some of which are prior to the election period and they all contained some statements which are derogatory to the dignity of the petitioner. I do not think it is necessary to consider them and it is enough to state that this paper has published wicked and vicious articles containing false statements in relation to the personal character and conduct of the petitioner and also in relation to the candidature of the petitioner being statements reasonably calculated to prejudice the prospects of the petitioner's election.

160. The next paper in which the false statements about the petitioner are alleged to have been published is 'Netaji' which, as already stated is a daily paper that is published at Gadag by one Itigi Vadamurthi. In its issue, dated 7th February 1957 (Ex. P.2) at page 2, column 2, an article under the caption 'An unchangeable misfortune to Sri Shivamoorthiswamy of Loka Sevak Sangh is published. It is stated in this article that Shri Shivamoorthiswamy was elected in the last general elections, that is, of 1952 with the help of Agadi Sanganna, the respondent in the present case, Mudhol Desai, and influential merchants of Koppal and Gangavati that had failed to repay the deep debt of gratitude and that he was, on the other hand, on the war-path. After all, I do not consider that this is a very serious publication for it is not denied that Sri Shivamoorthiswamy had the support of the respondent during the election of 1952. If it is stated that he was ungrateful for the help rendered by the respondent, I do not consider that it would be a great falsehood.

161. The next article that is complained of is in the issue of 12th February 1957. In this issue, under the banner head-line an article is published. The petitioner has started to build a communal Government with the help of Loka Sevak Sangh which has no foundation. Shri Shivamoorthiswamy's campaign is becoming useless. In this article it is stated that the petitioner Sri Shivamoorthiswamy stated that he would build a Government in which the Chief Minister will be elected by the people themselves and that those who heard him ridiculed and said that he had gone mad. The petitioner says that he did not make any such statement attributed to him; nor anybody ridiculed him; that he has gone mad and that this publication was false.

162. Again in the issue of this paper, dated 14th February 1957 which is marked Ex. P.6, it has been published that the petitioner is the President of the Loka Sevak Sangh, that the Sangh is composed of communities, heretics, land-owners and reactionaries and that he has round about him dacoits mostly and murderers and that under the name of Gandhiji he has cheated the people in the last election, that is, of 1952 elections. Again in the issue of the said paper dated 19th February 1957, marked Ex. P.9, it is stated that the petitioner was ostracised and that he was admonished and warned not to go to Talkal, Banapur, etc. Again in its issue, dated 21st February, 1957 marked Ex. P.13 it is published that the petitioner had disappeared from the field of contest in the election. Again, in its issue of 27th February 1957, marked Ex. P.16, the same paper had published that the people could not vote for the ungrateful Ayya, that is, the petitioner, and that no home had prospered in which he had set his foot and that his intention was to destroy the house and make monasteries. Again, in the same issue there was an other publication that one Maski Swamy said, a cunning, deceitful and dishonest Ayya and that he had not accounted for the moneys of the Gadag Conference and that he had misappropriated the moneys of the conference and that he stood for the Parliamentary election. It is alleged that this was false and that Muskki Swamy had not made this statement.

163. Again, the same paper in its issue of 15th February 1957 marked Ex. P.7 has stated that the petitioner had no motors except a jeep; that he could not purchase petrol for the jeep and that he had no money for travelling. Again, in the same issue, it is published that the petitioner has been jeopardising the lives of the national leaders, like the murder of Gandhiji. This is a very serious allegation. Again, in the same issue it has been published that the petitioner is a goonda. Then again, in its issue, dated 1st March 1957 Ex. P.17 it has been published in this paper that the petitioner has been busy with Basettappa, a Gunda whom the petitioner had put up. Again in its issue of 2nd March 1957, Ex. P.18, this paper had published that the petitioner looked like a swollen corpse in the wall-posters he had put up and that a report should be made to the police by those who could identify the corpse; that the petitioner had been deceiving the villagers and that he should therefore discard the garb of this pseudo-monk. Again, in its issue of 5th March 1957, an other publication has been made as per Ex. P.19 that the petitioner is a monkey and that he would next build up another party and that he will cheat people in the name of the party and please the people and make money. Again, in its issue of 8th March 1957 which is marked Ex. P.22 the paper had published that the petitioner was a reactionary self-opinionated man given to love of power and has been conducting himself on these lines. Though some of the opinions expressed above in some of these publications are not very serious and harmful, yet the cumulative effect of all these publications was to the great detriment of the petitioner's prospects in election. Two articles in this paper Ex. P.7 and P.13 are admitted by the respondent to be unfavourable to the furtherance of the petitioner's elections. The first says that petitioner wants to build a Jangama Rajya and the second says that the petitioner had disappeared.

164. The next paper in which a false statement is said to have been made is 'Swatantra' which is a Kannada weekly of Hospet and whose editor was and is S. M. Kotriah who was the agent of the respondent. The allegation is that he published in his paper dated 21st February 1957, at page 6, and marked Ex. P.57, a false statement of fact relating to the petitioner's personal character and conduct alleged to have been made by Sri Nijalingappa, the then Chief Minister of Mysore. The publication was to the effect that the Loka Sevak Sangha is a party born like a mushroom; that the leader of this party was in the Congress and wishing its welfare once; that in the Congress a ticket was refused as he was involved in a Criminal case, that then he began to abuse congress and built a party overnight. It is alleged that this is a false statement covering the petitioner's personal character and conduct which the Respondent and his agent believed to be false

and did not believe to be true and which is calculated to prejudice the Petitioner's election. The contention of the Petitioner is that in the first place Mr. Nijalingappa did not make any statement attributed to him. The circumstances under which he was refused ticket at the 1952 elections were well-known to Mr. Nijalingappa and to the Respondent and as such the publication of this was to damage the prospects of the Petitioner's election. In this regard it is to be mentioned that Mr. Nijalingappa has been examined as R.W. 77 and he has admitted that in his speech at Hospet on 16th February 1957 he made a statement as published in this paper and as such the editor of the paper Sri S. M. Kotiah is absolved of the charge of having published a false statement. The only point to be considered is whether Mr. Nijalingappa's statement is true. It is admitted that the Petitioner was arrested for having obstructed the Assistant Collector from collecting the Levy of grain in 1951 at Alvandi. No doubt, the Respondent has adduced some records in this connection. One of them is Ex. P.R. 2. It is a report of the Deputy Civil Administrator, Raichur, to the Civil Administrator, Raichur. In that report he has complained of Mr. Shivamurthiswamy, the present petitioner as having obstructed him from his collecting the usual levy. I cannot say that this report is all correct in its allegations against the petitioner; but, however, there is the fact that the petitioner was arrested in this connection and there was also a case against him put up. It was argued, however that this was not a criminal case and that the petitioner had only fought for the rights of the villagers as a citizen and as such his arrest was illegal. As I said before, the legality or the illegality of arrest is not in question now. The fact that he was arrested and a case was put up against him are not denied. Whether this was a criminal case or not is a technical point and the statements of Mr. Nijalingappa that he was involved in a criminal case might not have been quite correct in one way and it might have been correct in another way. At any rate, I think the contention of the petitioner that the statement that he was involved in a criminal case is not quite correct, is not tenable.

165. The next document in which false statement was published is a pamphlet named "Lokusevak Sangha Ki Janama Kahani" (Life story of Loka Sevak Sangha). This pamphlet is marked Ex. P.60 and the author of it is one Girdharilal Varma of Raichur. In this pamphlet, it is stated that the candidates of Loka Sevak Sangha, that is, the petitioner's party, were not only perpetrators of irreligious acts but were also compelling by force others to commit such acts and that none should vote for them in any event. This pamphlet was originally in Hindi and the translation of the passage complained of has not been filed. I am not therefore in a position to say anything about it.

166. Before leaving this aspect of the question, there remains to consider whether Bangarasetty and Vedamurthy, Editors of "Thungabhadra" and "Netaji", respectively, were the agents of the Respondent. As regards the former, Bangarasetty, the respondent has disowned all relations with him and he has stated that he was not his agent. I think this assertion on the part of the Respondent is wholly untenable. It is not denied by the Respondent that Bangarasetty was his polling agent at Siriguppa. It is also admitted that this Bangarasetty was looking after the feeding work of the workers of the Respondent and a voucher signed by him is filed with the Return of election expenses of the Respondent and it is marked exhibit P.137. Besides these, there are other documents which go to show that this Bangarasetty was working for the Congress. There are the reports of the Police Patels of Kukkanoor and Talkal. In this report dated 4th February 1957 and marked exhibit P. 332, the Police Patel of Kukkanoor says that Shankaragouda, the respondent in E.P. 258/57 came in his jeep for propaganda from the side of Koppal on 4th February 1957 and with him was Bangarasetty and that they all went towards Chikkanakoppa. Again, in his report dated 6th February 1957 it is stated that Shankaragouda Alvandi, the respondent in E.P. 258 of 1957 was with Channappa Vali P.W. 35, who also admits in his evidence that he was brought to Koppal constituency for propaganda on behalf of the congress, that Vedamurthy Itigi Bangarasetty, Shankarappa and others came from the side of Yelbarga; that after sometime the Respondent in Election Petition No 258, Bangarasetty and Hemangouda remained in his village for propaganda and the other went away. Again, in his report dated 10th February 1957, the same patel has reported that Bangarasetty and other came to his village and camped in the congress office. Then again, in his report, dated 8th February 1957 he has stated that the Chief Minister of Mysore had come to his village and that with him had come the respondent in this case Mr. Agadi Sanganna and also Shankaragouda, the respondent in Election Petition No. 258 and Bangarasetty. This shows that Bangarasetty was with Agadi Sanganna, the respondent in this case, in his car. Again, in his report dated 5th January 1957 he has stated that Mr. Vali Chennappa, P.W. 35, had come to his village for

propaganda, that there was a meeting of the congress workers and that this Bangarasetty, Shankarappa introduced Mr. Chennappa to the audience; and that he then said that as such personalities as Mr. Vali Chennappa are giving support to the Congress, the people should not think of any other party.

167. Besides these reports, his name also appears in the report of the Police Patel of Talkal. In his report dated 4th February 1957 the police patel of Talkal has stated that on that day the respondent Mr. Agadi Sanganna, the Respondent, Shankaragouda Respondent in Election Petition 258 and Bangarasetty, Shankarappa and Gadigappa Desai and many other congress workers came to his village and canvassed for votes in the village and went towards Bannikoppa.

168. Next there are also some reports published in Thungabhadra paper of which this Bangarasetty was himself the editor. In its issue dated 7th February 1957, there is an article mentioning the tours of the Respondent and also the Respondent in E.P. No. 258 in Yelburga taluk. It is stated in this that with the Respondents, Gadigappa Desai of Mudhol, Yellappagouda, Hemannagouda of Lakamapur, Shankarappa of Thagginamene, this Bangarasetty and other toured in Bewoor, Talakal, Lakamapur, Rajoor Kallur, Mudhol and other places. The other report in the issue dated 14th February 1957 of this paper is about the meeting that was held at Kukkanoor when Vali Chennappa visited it. It is stated that at this meeting Sri Bangarasetty made the closing speech and an office was opened at Kukkanoor for the congress party evidently! This goes to prove that the report of the Police Patel of Kukkanoor, mentioning the name of Bangarasetty, is not false one. His name appears in another publication in the issue of this paper dated 21st February 1957. This publication refers to a meeting at Kampli on behalf of the congress and it is stated that this Bangarasetty, one Subba Rao and other Shiva Settar made speeches explaining the congress ideals and asking for votes. There are also many a publication in the issue of "Thungabhadra" which go to show that he was working for the congress party. There are so many advertisements of the congress candidates published in this paper. There are also several publications asking the people to vote for the congress and condemning the Lokasevak Sangha party. Thus we see there is enough documentary evidence to show that this Bangarasetty was working for the congress and as such he was an agent of the Respondent.

169. Besides this, there is a plethora of oral evidence which goes to show that Bangarasetty was moving about freely doing propaganda for the Congress. It is stated by P.W. 2 Kotrappa of Koppal that there was a Geegi Mela show at Koppal before the polling and that at that show Bangarasetty appeared on the stage and read from the history of Basavannavar and told the audience that the congress is a big organisation and that votes should be given to it. This is also spoken to by P.W. 3 Nagappa. He has also stated corroborating the previous witness that he attended Gigi Mela party that on the platform Bangarasetty appeared and read out from some pamphlet and asked the voters to vote for the congress. The evidence of P.W. 51 Rudriah who was carrying on propaganda on behalf of the congress said that Bangarasetty was with him in all his tours and that he was meeting his expenditure. I think it is enough to state that more than 60 or 70 witnesses both on the side of the petitioner and the Respondent have spoken about the activities of this Bangarasetty in the election campaign of the congress party. It will not be incorrect to say that he was the most ubiquitous figure that moved about the whole constituency and I think that he is the man who made and marred the election of the Respondent.

170. Then, coming to the other editor Ittigi Vedamurthi, of Netaji, it is to be observed that even in this case the respondent has denied that he was his agent. Again, it is to be observed that his denial is untenable. This Vedamurthi has been paid Rs 500 by the respondent and the respondent has admitted it. His voucher has been marked Ex. P.120 and it says that the sum of Rupees 500 was for advertisement, publicity, for propaganda activities and supply of newspaper "Netaji" till the end of election. The respondent does not deny this voucher and it is not clear how he says in the face of this that Ittigi Vedamurthy was not his agent. The statement of the Respondent that he came to know of Vedamurthy only on the day on which he paid the amount is not to be believed. It is also to be observed that in this paper, as mentioned above, there are many articles supporting the congress candidates and asking votes of the people for the congress candidates. His name appears also in some of the Police reports referred to above. He also was accompanying some of the propagandists of the congress like Vali Chennappa P.W. 35. This is spoken to by P.W. 60, Gurappa of Mudhol. He is a very reliable witness. He is the President of the Samaja Seva Sangha of Mudhol.

He has stated that Vedomurthy, Vali Channappa and Bangarasetty had come to him during the last elections and asked him for votes and help to the respondent.

171. Besides this, there are several other witnesses on the side of the petitioner who have spoken to the fact that Vedomurthy was doing propaganda for the congress candidates. As already observed, his voucher Ex. P.120 is clear in the matter and the amount that has been paid to him is for advertisement, for publicity, for propaganda activities and supply of news paper "Netaji" till the end of the election. It is also in evidence that the respondent and his workers were freely distributing copies of this paper and copies of "Thungabhadra" in the various villages of the constituency. I feel therefore no doubt about the fact that these two editors were agents of the Respondent.

172. It remains to consider only the false statements made orally by the propagandists of the respondent. This is spoken to by a number of witnesses on the side of the petitioner. The first witness is one Gurupadaswamy who has been examined as P.W. 12. He has stated that R.W. 63 Nelloor Shivappa had come to Gangawathi; that he made a speech there and in the course of his speech, he abused the petitioner; that one man in the audience Hosahatti Balahatti gouda got up and asked Nelloor Shivappa not to abuse big persons like that; that Nelloor Shivappa replied that he should simply keep quiet; otherwise, he would hand him over to the Police. There is also other oral evidence to show that Channappa master also spoke that Shivamurthyswami had collected Rs. 30,000 and had eaten it up. No doubt, the petitioner has denied all these allegations and there is no doubt also that these are false statements.

173. It was argued by the learned advocate for the Respondent that publication implied written publication and not oral. I do not think I can accept this argument for a candidate may engage 100 persons who will go on publishing all sorts of false information about his rival. To hold that such oral propaganda will not bring such activities within the mischief of clause (4) of article 123 of the Representation of the People Act will be meaningless. Thus, on the whole, I think the evidence on the side of the petitioner supports the allegations that false statements have got been made by the Respondent's agents and that the Respondent also was responsible for it, because he also distributed the papers that contained such false statements.

174. The next corrupt practice that has been alleged to have been practised by the Respondent is the hiring or procuring of conveyance for carrying electors to and from the polling station on the polling day. The first witness that has spoken to this is P.W. 5. He has spoken to the effect that at Koppal on the polling day he saw Mangalapur voters being brought on Tanga by Tahsildar Hussain Saib a worker of the Respondent, and gave tea and refreshment in the house of Babasab and then taken to the polling booth in the Municipal Office. As already stated this witness has stood cross-examination well and there are no grounds to disbelieve him. The next witness is P.W. 29 Eswarappa. He is a man of Alvandi in Koppal taluk. He has stated that he was the owner of the house opposite to Shankaragouda's, respondent in E.P. 258, that on the polling day he was sitting on the pial, that then he saw Lambani voters coming on 4 Carts and getting down and going to Shankaragouda's varandah; and that Shankaragouda's brother gave Rs. 10 towards the cart hire. He has also stated that the Lambani voters were of Hydernagar and that Hanmanthagouda, brother of Shankaragouda, respondent in E.P. 258, sent some voters of Hatti and Belagatti on the service bus and paid Rs. 12 to the conductor thereof. He has stood the cross-examination well and I accept his evidence. The next witness is Veerannagouda of Lakamapur. He has stated that he had gone to Banapur on the polling day to vote on a lorry and that the lorry belonged to Janthly Neelappa and that with him had come 30 or 35 persons, and that all of them were voters; that the lorry had been engaged by Shivannagouda Hemannagouda and Guddappa who were the workers of the Respondent during the last elections; and that he did not pay any hire charge for the lorry. He has also stated that after voting they all returned in the same lorry and that they did not give any hire charges.

175. The next witness is P.W. 49, Tippanna. He has stated that he was taken in a lorry to the polling station with 35 others by Ramanna Shanabhoga of Nittali and Maradi. This witness has also stated that some females had also come with him in the lorry and has stood the cross-examination well. He has also stated that the persons that had come to call him told him that the respondent and Shankaragouda were standing as candidates for the congress and that their votes should be given to them. The next witness is P.W. 57 Yamanappa of Rajoor. He has stated that on the polling day Rama Rao Desai and Naikappa of Channappanahali

took voters in the cart from Channappanahalli to Rajur and that the carts belonged to Ramarao himself and that they made two or three trips. This witness has stood the cross-examination well and I do not see sufficient grounds to disbelieve him. The next witness is P.W. 58, Veerabhadraiah. He has stated that on the polling day he was at Kukkanoor, that he was then the polling agent of the petitioner and at the recess time he went to the tea shop of Basappa Hatti of Kottige and that a trailer and a Tractor were standing in front of that shop, that there were Lambanis in the Trailer, and that the tractor belonged to Shankarappa Ghattaraddihali; that these Lambanis were made to get down and were taken to the Ginning Factory, that formerly belonged to Sanganna. the respondent, that the Lambanis all belonged to Alappanahalli Matta Thanda and that they were all voters. This witness though he was the polling agent of the petitioner is not a member of the Lokasevak Sangha and he has stood the cross-examination well. I do not see sufficient grounds to disbelieve him. The next witness is Vaziragouda, Police Patel of Rajoor.

176. He has stated that on the polling day Channappanahalli voters came at 11 or 11-30 A.M. on carts and that they were unloaded outside 100 yards limit and went to Ramachandara Rao's house, that they came to vote and voted. He has also stated that there were 10 or 12 persons in each cart, and that there were also some ladies. He has stood the cross-examination well. Further, he is the Police Patel and I think I should accept his evidence.

177. The next witness is P.W. 80 Bharamojappa. He has stated that he is a man of Dammur, that the voters of Dammur had to go to Hagedal for voting, that he had gone to vote, that 8 carts had come to take them all, that they all went to Hagedal, that they left their carts in the Maidan in front of the village and then went to the polling booth and voted. This witness appears to be very reliable witness as he has given the names of the owners of the carts; that had taken the carts. He has also stated one Chidamberrao had given Rs. 35 towards the cart hire on the previous day. The next witness is P.W. 88 Shiviah of Dammoor. He has stated that he knows one Chidamberrao of Sanganhali and that Chidamberrao was working for the Congress and that he had come to his village a day before the polling during the last general election that that day he was put up in Hanmanth Rao's house; that 8 or 10 of them had been sent for; that he had gone there; that he asked them to vote for the congress and that they agreed to vote accordingly. He has further stated that they had to go to Hagedal for voting and Chidamberrao gave them Rs. 35 for that purpose and he gave the amount to his hands. He has also stated that the next day, that is, on the polling day, 8 carts were engaged at the rate of Rs. 2-8-0 and about 60 or 70 persons in all went on the carts and voted. He has also stated that they spent the remaining amount in drinking tea. This witness has corroborated the previous witness in all essential particulars and has stood the cross-examination well. The next witness is P.W. 90 Sivangouda of Gadigeri. He has stated that there was a polling booth in his place; that Virapur people had to come to his village to vote and that Virapur is also called Gorahalli; that Thalloor and Madloor people had to come to his village to vote; that on the next day, that is, the day of polling the villagers of all these places except Gorayabahal came to vote and that the people of Gorahalli had not come to vote; that Biddanagouda told him to go to Gorabahal and engage carts, and bring the voters and gave him Rs. 10, that he went to Gorabahal engaged 3 carts and the two carts came from Gaddigira after he went and that he paid Rs. 2 to each cartman and that 50 voters had come and out of them about 10 or 12 were women and that he left them in the village. Some allegations were made against this witness. But they have been denied and he has not been cross-examined in other respects and as such I cannot but accept his evidence.

178. The next witness is P.W. 91 Adaviappa. He is a man of Malekoppa and says that he knows Guru Rao Desai of Malekoppa; that he is a Shanabhoga of Yerehanchinal village; that Mannapur people had to come to this village to vote that he went to Guru Rao Desai's house in the morning as had been asked; that Guru Rao Desai told him that his jeep was going to Mannapur to bring voters; that one Kalkappa his driver would take the jeep to Mannapur; that he should accompany him to Mannapur and bring voters. He has further stated that he went to Mannapur on the Jeep that the jeep was left at the Chawadi and that he went to the house of Channappagouda; that Channappagouda gathered voters of both sexes; that they were all brought on the jeep to Malekoppa; that when they reached Malekoppa; they stopped the jeep at the entrance of the village and that he went back with the jeep to bring other voters from Mannapur; that Channappagouda had collected another batch of voters and that they were also brought on the jeep; that by the time they came the previous batch had voted and came back; that the second party got down from the jeep and that the first party got

into the jeep; that they took them back to Mannapur. He has further stated that they returned to Malekoppa, with third batch of voters and that by that time the second batch of voters had returned after voting; that the third batch got down and the second batch got into the jeep and they took them back to Mannapur and that they did not take the third batch of voters. He has further stated that they went to Sompur where there was a polling station, that Sidnekoppa voters had to come to Sompapur to vote that he therefore took the jeep to Sidnekoppa; that he went to the house of Rangarao Desai; that he sent the voters in his jeep that he remained there alone; that with the jeep was sent another person and that the jeep made two trips like this taking the voters and taking them back. This witness has further stated that they went to Binnal as the voters of Binnal had to go to Chikkanakoppa polling station to vote at Binnal; that they went to Channarah's house; that Basappa Challori came there; that they both gathered voters and sent them to Chikkanakoppa and that there were two trips there also and that from there he returned to Malekoppa. This is a very important witness. He has given all the details of the various trips that he made in the jeep of Guru Rao and he has stood the cross-examination very well. He is no doubt turned as pseudo-Congress man, because of his giving out the truth. It is to be observed that Guru Rao Desai has not been examined, but only his driver Kalkappa has been examined as R.W. 90. He has no doubt stated that he did not take any voters in lorry or jeep or van to the polling station. The evidence of this witness cannot be believed firstly, his demeanour was not good when he was in the witness box. He used to laugh whenever inconvenient questions were asked. He has also stated that Rangarao Desai was driving the jeep during the election period which goes to show that Ranga Rao would go to the meeting as reported in Ex. P.49(c) and P.48(b). His statement with regard to his obtaining licence also is suspicious. The next witness is P.W. 101 Sangappa. He has stated he is a man of Kuduremoti; that the voters of Chandinhal or Channal and Vataparvi had to come to Kuduremoti for voting; that on the day of polling, voters from Vatparvi came on the lorry of Erasi Shankarappa; that voters were unloaded in front of the village; that they came to the polling booth and voted and that they walked back to the village after voting and that this was at about 3 or 4 p.m. that day. No doubt this witness has been unable to give the number of the lorry or the colour thereof but he has given correct particulars with regard to the other points. His evidence has not been tried to be counteracted by examining any other witness; and as such I think I should accept his evidence as true.

179. The next witness is P.W. 128 Piddappa. He is a man of Manapur and has stated that he went to Malekoppa to vote on the polling day on the jeep of Guru Rao Desai. He has given all the details of the persons that went. Of course he had not been able to give the name of the driver, but has denied that Barakeri Advappa was driving. He could have easily said that Barakeri Advappa was driving. This witness has corroborated P. W. 91 and as such I must accept his evidence. The next witness is P.W. 105 Shankarappa. He is a man of Mangaloor. He has stated that there was a polling booth in his village that Bhairnakanahalli people had to go to his village to vote and that Bhairnakanahalli people came in a lorry to vote that one Shankaragouda had taken the lorry and that the lorry had gone to Bannikoppa and that he too had gone with the lorry to bring the voters that one Danappa had asked him to go with the lorry and that Dyamappa was working for the Respondent and that Dyamappa told him "You are simply sitting here. You go and bring the villagers"; that so he went in the lorry that the lorry belonged to Thagginamane Shankarappa that the voters were unloaded near the hall in front of our village and that the lorry went to Kuduremoti. He has also stated that Shankaragouda Thagginamane was himself driving the lorry. The only point is that he did not tell the petitioner who had gone to his village; that day, but he went to Gurulingiah next morning and told him. He has on the whole stood the cross-examination very well, and he is a believable witness, because he has given all the details. The Respondent has not examined any witnesses to counteract the evidence of this witness. He could have examined Shankaragouda Thagginamane or Dannappa. But he has not chosen to do so. That is another reason why I should accept the evidence of this man. It may be argued that the statement of this witness that the lorry belonged to Shankaragouda Thagginamane is false because that lorry had been requisitioned by Government for election purposes. It is true it was requisitioned but the evidence of R.W. 81 is that the vehicle will be free after transporting the Polling and Presiding Officers within respect stations.

180. Thus, we see there is plenty of evidence in support of the allegations of the petitioner that on the day of polling, the respondent or his agents hired or

procured conveyance for carrying the voters to the polling stations and also from the polling stations.

181. It was contended by the learned advocate for the respondent that conveyance of voters by itself was not a corrupt practice but it was hiring and procuring. This is true but from the discussion above it is seen that the agents of the respondent hired and procured vehicles for the conveyance of voters and as such that may, no doubt that the corrupt practice has been committed. It was next contended by the learned advocate that the witnesses that had spoken to the conveyance of voters on the lorries and carts had not given the names of the voters that were thus conveyed and there was also no knowing whether these persons went to the polling booth and voted. It is true that in most cases the names of the voters have not been mentioned and thereby itself cannot be a ground to hold that the persons conveyed were not the voters, especially in view of the fact that every adult had the right to vote and the persons that were conveyed are said to have been adults. Similarly the contention that there was no knowing whether the persons really voted that day is not very material for they might have voted for the petitioner and in such cases the respondent carrying them will be of no use. Further most of the witnesses have stated that the persons that came on the lorries and carts went to the polling booth to vote.

182. The next contention of the learned advocate for the respondent is that the evidence on the side of the petitioner was insufficient. It is true in some cases there is no corroboration. Even in such case I have accepted the testimony because I found the witnesses by their demeanour and behaviour appear to be very trustworthy witnesses. The same thing could not be said of the witness for the respondent. They were halting and hesitating and also prevaricating.

183. The next corrupt practice that is alleged to have been committed by the respondent is the suppression of several items of expenditure in the return of election expenses and incurring and authorising an expenditure exceeding the maximum limit prescribed under the rules. The return of election expenses by the respondent is marked Ex. P. 119 and, according to that, a sum of Rs. 12,889-14-3 was spent by the respondent for his election and the return further mentions only eighty items of expenditure. The charge against the respondent is that he has not maintained a proper account and that he has suppressed several items. The items that have been suppressed are said to be these; moneys offered to the voters for purchasing their votes; expenses incurred on the Election Offices at each taluk in each constituency; the huge amount of petrol on the dozen or more motors working in each of the taluks of the constituency; the money spent on wall-posters and mural paintings and pamphlets; the amount spent for purchasing the copies of 'Thungabhadra' and 'Netaji'; the money spent on the hiring of carts, tongas, etc.; the money spent on the four Gee Gee Mela parties, the moneys spent for the printing of pamphlets in the Manunatha Printing Press, Gangavathi, Sarvodaya Printing Press, Hubli, the Asoka Printing Press, Koppal, the Arvind Printing Press, Koppal, the Koppal Printing Press at Koppal, the Hobale Brothers Printing Press at Gadag; the money spent on the processions of bullocks and on the entertainments by arranging dramatic shows at the fairs of Vankalkunte and Mangalore; the money spent on the loud-speakers; the money spent on travelling by the respondent. It is urged that, in short, almost every item of expenditure shown in the return of expenses has been grossly minimised. Further it is stated that the expenses incurred between the 19th and 28th of January, 1957 have been suppressed in entirety.

184. According to the Section 77 "Every candidate at an election has either by himself or by his election agent to keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both days inclusive". Further it is enjoined by the section that the account shall contain such particulars as may be prescribed and it also enjoins that the total of the said expenditure shall not exceed such amount as may be prescribed. It may be stated here that the maximum prescribed is Rs. 25,000.

185. As regards the maintainance of accounts, it has to be observed that the respondent has not followed the rules prescribed. I quote his own words in regards to this as it will be better to appreciate it. It runs as follows: "I have kept accounts of my expenses from day to day. I have produced them, Ex. P. 119 is that account. I copied this from the accounts that I had kept from day to day. They are not in the form of Khata and Khirdi. I have not mentioned any item on the credit side. I have maintained these accounts in Kannada. My clerk has

written these accounts. His name is Shankarsa. I maintained separate accounts, one for petrol, one for travelling and a third for telegrams. These three consolidated accounts are added in my return of election expenses in the last. I did not follow any particular system of accounting in maintaining these accounts." These words speak for themselves. The Respondent is a shrewd businessman and has been in business for the last 30 years and more, and he has not produced the original accounts from which, he says, he has prepared Ex. P. 119, the return of election expenses. He has not examined the clerk that maintained these accounts. It can hardly be said that the respondent has maintained proper accounts. He also does not know in whose handwriting Ex. P. 119 is.

186. Then we come to the items of expenditure that are said to have been suppressed. Before proceeding to consider these items, it will be better to state here that according to the statement of the respondent himself, he had sold his Ginning Factory for Rs. 80,000 just before the elections. He has, no doubt, stated that he spent Rs. 40,000 out of this amount for paying back his creditors and that he paid Rs. 20,000 to the Standard Vacuum Oil Company and that he had got only Rs. 20,000 remaining and that he had invested them in the business. That he said that Ginning Factory for Rs. 80,000 is also spoken to by other witnesses and as such we may take that the mill was sold for Rs. 80,000. As regards the statement of the respondent that he paid Rs. 40,000 out of that amount to pay off his creditors is not supported by any other evidence. Nor is his other statement that a sum of Rs. 20,000 was paid to the Standard Vacuum Oil Company also supported by any other testimony, I do not think I can accept the testimony of the respondent in toto in this regard. At any rate, it seems to me that he had plenty of money to spend over his election.

187. We may now go for a consideration of each of the items. It has been seen above that it is proved that Gedigappa Desai, as agent of the respondent, paid Rs. 300 to Sandihaal voters on the day of polling, that is, 10th March, 1957. This item has to be halved because the Assembly candidate, that is, the respondent in E.P. No. 258/57 has to bear a moiety of it. So a sum of Rs. 150 has not been included in his return of election expenses.

188. It has also been seen above that there were several bullock processions in various places in the constituency and some amount must have been spent in connection with those processions. It has to be gathered from the evidence of the witnesses that more than a dozen such processions took place and during the processions gas-lights were used and carts and jeeps were also used. It will not be an over estimate if we take that the respondent has spent about Rs. 25 for each procession and as such a sum of Rs. 300 must have been incurred by the respondent for these processions.

189. It is in evidence that offices had been opened in five places in the Yelburga portion of his constituency and we may take it that a sum of Rs. 50 should have been spent for each office for the election period. Half of this will be a sum of Rs. 125 which the respondent has to share with the respondent in E.P. No. 258/57. Besides these five offices, the evidence goes to show that there was an office at Koppal, an office at Kushtagi, an Office at Sindnoor, an Office at Gangavati, an Office at Hospet, an office at Kanakagiri, an Office at Siruguppa, an office at Hadagali and one at Kampli. Thus altogether about 10 more offices have been spoken to and we may take Rs. 20 for each office and it will come to a sum of Rs. 200. Thus altogether a sum of Rs. 325 had to be shown in the return of election expenses.

190. Then he has not shown the expenses that he incurred in connection with the polling agents. The respondent has stated that there were more than 300 polling stations and the respondent had to appoint about 200 polling agents, as he himself admits. Some of the agents, it has been admitted, had to travel as many as 60 miles and as such it will not be an exaggeration to take Rs. 5 as the expenditure on an average for each polling agent and the total figure will be Rs. 1,000 on this account, and this has not been shown in the return of election expenses.

191. The next item is for the painting on walls. In the return of election expenses, the respondent has shown painting on 27 walls in Yelburga Constituency and he has stated that it cost him Rs. 200. He has not shown this item of expenditure in regard to the other 7 Assembly Constituencies spread in his Parliamentary Constituency, and it is not stated that he did not get any wall paintings in other portions of the constituency done. There is evidence on the side of the petitioner to show that there were paintings on the walls of houses and temples in the villages of the other constituencies also. We may, therefore take a sum of

Rs 1,400 as the amount incurred for the wall paintings in the other taluks. Thus a sum of Rs 1,400 has been suppressed and this also had to be included.

192 There are some of the large number of items that have been suppressed by the Respondent. To consider all would be an arduous work and I think I should take only the very important items for examination.

193 The respondent has produced his account books and they are marked Exhibits, 208, 209, 210 and 211. The first two are the Khata and Khirdi in respect of the respondent's petrol business and the latter two are in respect of dallal business. It has to be observed that the Day Book, i.e., the Khirdi of the petrol business stops in the month of August 1959, though the corresponding ledger has got entries even after that date. The books of the dallal business are for the entire year.

194 It is admitted by the respondent that he drew a sum of Rs 7,700 on 25th February, 1957 and this is also entered in Exhibits P 210 and 211 as per Ex P 210 (a) and 211(a). As regards the statement of the respondent is this, On 25th February, 1957 a sum of Rs 7,700-2-6 has been debited to his account and he has also stated that he drew this amount and it is possible that a portion of this amount might have been spent for his elections. It is not clear how much he spent for elections and how much for his other expenses. It is clear that his statement cannot be believed, because he has stated elsewhere in the deposition that this amount was composed of several debits that had been made against him previously and that on that date the total was found to be Rs 7,700 and as such the debit entry was made. This is hardly believable. He must have used this amount for his election for the amount was drawn on 25th February, 1957, the mid-election period.

195 The next is a debit of Rs 4,121 against V S Agadi, the account in his son's name. This item is made up of 5 items and two of them were debits to the respondent and two were in his wife's name and that all these items were taken from the shop cash balance, as the respondent says. Of these, about a sum of Rs 3,100 was spent, he says, for a pilgrimage that he made to Yedyur and other places in the Mysore State in the month of Margasira of 1956, that is November or December. The respondent has further stated that he cannot say why the other sum of Rs 1,021 out of this was drawn. Even this is not to be accepted, for he has not examined any other witness to speak that he had gone on a pilgrimage to Yedyur and other places. I am inclined to think that this is all a story invented for the purpose of hiding the fact that these amounts were spent for election purposes.

196 The next item pertaining to a sum of Rs 550 is the amount debited to the account of the respondent's son's account, but paid to the respondent. This was on 9th March 1957. Similarly on 11th March, 1957 and 12th March, 1957 two sums of Rs 685 6-0 and Rs 185 have been debited as per Ex P 210(d) and (c) respectively to the account of V S Agadi and paid to the respondent. So also two sums of Rs 424 2-0 and Rs 460 have been debited to the account of V S Agadi and paid to the wife of the respondent. The respondent has stated that he does not know why these amounts were taken by his wife and he has stated that they might have been taken for making some jewels to his daughter. Even in this regard no reliance can be placed on the words of the respondent.

197 Again there is a debit of Rs 2,050 in the name of Raja Mohammed of Raichur on 21st February, 1957 as per Exhibits P 211(b) and 210(b). This amount is said to be the price paid by the respondent to the said Raja Mohammed of Raichur from whom the respondent purchased a jeep. This person Raja Mohammed of Raichur appears to be a fictitious person. He has not been examined. The receipt taken by him has not been produced and it is said that it was passed on to the persons to whom the jeep was subsequently sold. It is also in the evidence of the respondent that this car belonged not to Raja Mohammed but to another person Hanumanthappa, Contractor, and that the registration was not got transferred to his name. It is therefore not unreasonable to infer that this story of the purchase of a jeep from Raja Mohammed of Raichur is unbelievable.

198 Then there is the debit against Gedigappa Desai who has been referred to above as one of the agents of the respondent who gave Rs 300 to Bandihhaal voters at Thondehaal. This debit is dated 4th January 1957 and the respondent does not deny it. He stated that he sent this amount to Gedigappa Desai on 4th January 1957 and his explanation is that it was a loan. This Gedigappa Desai has not been examined and the evidence of the respondent cannot be accepted.

199. The next item that has to be considered is a cheque given to B. E. Ramaiah, the Assembly candidate from Siruguppa on 10th April 1957. It is stated by the respondent that this cheque was issued in favour of Ramaiah on account of a gold chain supplied by him. Even here the explanation of the respondent is not believable. This Ramaiah has been examined as R.W. 78 and he has stated that he was working for the Respondent in his constituency. No doubt he has denied that his brother went and asked the respondent for a sum of Rs. 3,000 and odd as the amount spent by him on behalf of the respondent in the Siruguppa Constituency. This cheque for Rs. 1,290 goes to show that the respondent has paid this amount towards the expenses of the election incurred by B. E. Ramaiah and not for the supply of a gold chain. This B. E. Ramaiah is not a Shroff and does not deal in gold and it is not clear why the respondent who is a shrewd businessman himself could not have purchased the chain.

200. There are two more debits on 2nd February 1957 and 4th February 1957 for sums of Rs. 517 and Rs. 117-2-0 respectively to the account of V. S. Agadi but paid to the wife of the respondent. The Respondent has not been able to explain why these amounts were given by his wife and as such these amounts also should be considered as having been spent by the respondent for the election.

201. There is another big item of debit for Rs. 6,338-22-0 against one Nagappa Bagali who has admitted to be the clerk of the respondent. This was on 5th March 1957 as per Ex. P. 210 (bbbb). This is said to be the cost of kerosine oil entrusted to this clerk for sale. But even here I am not inclined to believe the version of the respondent. The debit has been on 5th March 1957 and the explanation of the respondent is that the clerk has paid the amount without patli and it was credited to his account on 28th February 1957 alone as per Ex. P. 210 (eeec). It is also stated that the clerk had paid the amount in several instalments as and when he sold the kerosine oil and as such the amount was debited on 5th March 1959. This appears to be rather a strange procedure. I do not think it will be wrong to infer that this amount also should have been utilised by the respondent for his election purposes.

202. Then we come to the petrol spent by the respondent for the election purposes. In the return of expenses the amount shown for petrol purchased for election purposes is a sum of Rs. 3,769-13-0. The allegation of the petitioner is that this a very great underestimate of the price of petrol utilised by the respondent during his election campaign. Even in this regard the respondent appears to have played a lot of jugglery by manipulating accounts to suppress the expenditure on petrol, consumed by him for his election purposes. It is admitted by the respondent that during the election period he got a supply of 4,000 gallons of petrol from the Company and he cannot say what the balance was on the date the election closed. Whatever it is, out of these 4,000 gallons according to his return, he has utilised only about a thousand gallons and a little more. As spoken to by P.W. 145 Hanji Kotrappa and almost admitted by the respondent a sum of Rs. 1,090-7-0, being the value of 341 gallons of petrol purchased in the name of V. S. Agadi between 19th January, 1957 and 13th February 1957 and 14th February 1957 and 13th February 1957 has been spent. This amount has to be added to the amount that has been shown in the return of election expenses.

203. The next item that is alleged to have been not included in the return of expenses is the hire of the several motor vehicles that the respondent used during the election period. It is stated that the respondent used more than 40 vehicles and this is evidenced by the numbers of the vehicles noted in the several bills in Exhibits P. 238 to 255 issued in the name of V. S. Agadi. The contention of the respondent is that some of these vehicles belong to his friends and some belong to the others and that most of these had been lent to him free. He himself has given a hire of about Rs. 300/- to one Abdul Razack of Siruguppa and there is another letter written by a man of Gadag and it is marked Ex. P. 225. From this it is to be seen that the respondent had borrowed a vehicle from this man also. It is stated in this Exhibit that a sum of Rs. 40/- was agreed to be paid by the respondent as the hire for the vehicle. It is quite possible that the respondent had taken some other vehicles on a lesser hire. He has not examined any of the persons who had lent him their vehicles and as such it is not possible to accept his statement that he had got them free of charge.

204. Therefore, if we take Rs. 30/- as the hire per day per vehicle and taking 10 days as the average period for which each vehicle was used, the total amount of hire will come to nearly Rs. 12,000/-. Thus we see the respondent should have included this expenditure also in his return of expenses has failed to do so. If we add up all these amounts detailed above it will be more than Rs. 25,000/- the maximum prescribed under the law.

205. I am, therefore, inclined to think that the allegation of the petitioner that the respondent has suppressed many items of expenditure incurred by him and that the total expenditure exceeds the maximum prescribed, is proved.

206. Before leaving the subject, I think I should give some reasons as to why I am not accepting the evidence of the respondent without corroboration. He had made statements which are improbable and against overwhelming evidence. For instance, he has stated that he and Bangarashetty are not on good terms and that Bangarashetty did not accompany him in any of his tours. As already observed, Bangarashetty was the most active worker of this respondent and his name is on the lips of about 70 of the prosecution witnesses. Secondly, he has stated that he was not reading any paper, except 'Samyukta Karnataka'. This was evidently to claim that he had nothing to do with the articles in 'Thungabhadra' and 'Netaji' and it is in evidence that 'Thungabhadra' and 'Netaji' were freely distributed in his constituency. And even the receipt given by Vadamuthi, the Editor of 'Netaji' shows that he has also sent the copies of this paper. Then as regards the payment to 'Swatantra' Editor only a sum of Rs. 100/- has been shown, though he has paid once Rs. 100/- and another time another Rs. 100/- by a cheque. The first payment, he says, was towards the subscription and Rs. 100/- cannot be the subscription for 'Swatantra', a weekly. As regards his workers, he has stated that he was not paying any of them, but that all were volunteers. It is rather difficult to accept this statement. Then as regards Nelloor Shivappa, it is alleged, has made some false statements against the petitioner, it is stated by the respondent that he did not engage his services and then subsequently he has admitted that he met him at Kushtagi and there invited him to come and do propaganda for him; whereas the evidence of Nelloor Shivappa is that Nagappa Bagali, Gunasta of the respondent had come with his jeep to Ron to bring him for propaganda. This Nelloor Shivappa is the respondent's own witness. He has stated that he does not know the number of the jeep of Shenkara Gowda, the respondent in E.P. No 258/57. Then he has stated that he purchased HTH 99, Dodge car, in 1954 or 1955 from one Marveeriah, the man who belonged to a village only 5 or 6 miles from Koppal. It is not clear whether this purchase was real, for the Registration of this car remained in the name of Marveeriah himself and the explanation given by the respondent in this regard is rather childish. Then he has stated that he did not know to whom vehicle No. HTH 905 belonged. Then when he was confronted with Ex P. 618(a) he admitted that the vehicle belonged to him. This is not to be found in the Registration Office. Some of the receipts that he has filed along with his return of election expenses are not signed by the parties but by the respondent himself, and in some of them it is not stated and that they were in full satisfaction. Next it is stated by the respondent that he had in all about 22 workers only, but the vouchers filed by him relating to the feeding of his workers go to show more than a thousand rupees, even the persons that gave those vouchers have not been examined though they are said to be the clerks of the respondent himself. Then the testimony of the respondent in regard to his going to Ralpur to file his nomination paper in Abdulla Khan's car appears to be rather doubtful. Because his statement that he did not make Abdulla Khan file nomination as his dummy is contradicted by his own witness Abdulla Khan who has been examined as R.W. 54 and who has reluctantly admitted that he filed nomination and the amount of the deposit therefor was made by the respondent.

207. Again there are some adjustments made by the respondent and explanation given by him in that regard is not such as to inspire confidence in his evidence. These adjustments relate to sums of Rs. 1,492-13-0, Rs. 375-11-6 and Rs. 2,965-9-3. These are amounts of debits against various persons for the purposes of petrol by them and these various debits have been it is admitted by the respondent credited to these parties and debited to V. S. Agadi's account in the Dallal business books. Evidently no amounts were received from these parties but the amounts were shown having been received from them and debited to V. S. Agadi's account in the books of Dallal Accounts. The explanation is that these amounts would be recovered from the parties by the Dallal business. It is not clear whether these amounts have been recovered subsequently from the various parties. These amounts it must be observed had to be shown in the Return of Election Expenses but they have not been. Another curious statement of the respondent is that he did not know that work each of his workers was doing. Then his statement that he did not resign from the Congress in 1951 and that he did not work for petitioner in 1952 elections are opposed to the articles published in Thungabhadra and Netaji.

208. There is however one more fact which I would like to refer to as it throws a good deal of light on the varacity of the respondent. It is admitted

by him that he was sending monthly reports of Sales Tax Departments showing the consumption of petrol for his own use and these reports are marked as Ex. P. 678 to 685. These returns are said to be not false returns and that these were prepared by looking into his account. From these reports it is to be seen that no petrol has been made use of by him for his own use in the month of November 1956, but in his account books he had admitted that there are entries showing a consumption of 50 gallons of petrol in November 1956. Apart from this there is also the fact that during the election period a total quantity of 1150 gallons has been used for his own use by debiting it to the account of V. S. Agadi. He also admits that he received a total quantity of 4000 gallons from the Company.

209. The point for consideration is whether this huge quantity of petrol was really used. It is said that Kerosine oil and crude oil were being supplied to his customer in six taluks and the petrol was consumed in that connection. This cannot be true firstly no witness has been examined and secondly more than 50 or 60 gallons could not have been used for these purposes. Obviously most of this petrol must have been used for election purposes as it was the election period. The respondent has suppressed consumption of his petrol and has not included the same in his return of election expenses. I think this will be enough to show that the return of expenditure Ex. P. 119 of the respondent is not a correct one.

210. It was argued by the learned advocate of the respondent that full particulars about the suppressed items in the return of election expenses have not been furnished in his petition or schedule by the petitioner and as such he should not be allowed to develop his case in the course of the evidence. In this respect I think it is enough to state that the petitioner has furnished some particulars in this regard in his petition and it was unnecessary to furnish any more particulars as I think it would be a matter of evidence.

211. Next it was contended by the learned advocate that there was no evidence regarding the various items of expenditure that have been said to have been suppressed I think in the course of discussion of the evidence I have referred to these points and I do not think it is necessary to advert to the evidence regarding each time. I wish however to mention only one of these viz., consumption of petrol by the respondent for his election purposes. The learned advocate for the respondent admitted that the respondent had used about 40 to 50 vehicles for his election purposes. He contended however that these vehicles belonged to his friends, that they had lent him those vehicles gratis. He also contended that they were putting petrol to those vehicles themselves. This is a matter which cannot be accepted easily. It is in evidence that respondent had paid hire to some of the vehicles that he made use of. As for instance the van of Abdul Razack of Siruguppa. Even in this regard he has admitted a sum of Rs. 100/- more paid to him has not been entered in return of election expenses. None of these so called friends were very generous to the respondent by placing their vehicles at his disposal without charging any hire or asking petrol to be put have not been examined. In the absence of that evidence it is not possible to accept the testimony of the respondent alone that these various vehicles had been given to him by his friends without charging any hire. Even the pay of the drivers seems to have been paid by them alone. On the whole I consider that this is a mere screen to hide the huge expenditure that the respondent had incurred on this account. Even a friend like B. V. Desai the candidate for the Assembly seat from Gangavati Constituency has made use of petrol drawn from the respondent's bunk and still he owes the respondent a fairly big amount in this regard. This shows that he was not putting the petrol himself.

212. The next charge against the respondent is that he obtained or procured the assistance of persons in the service of Government and especially the Patwaris of villages. The allegation in the petition in this respect is that the respondent obtained the assistance of about 8 patwaris and that they are Sada Shiva Gowda of Mandalagiri, Shivashankarappa Gowda of Myageri, Krishnappa Desai of Maradi, Guru Rao Desai of Malekop, Krishna Rao Desai of Vattappannahal, Ranghavendra Rao Patwari of Bedavatti, Ramachandra Rao Patwari of Rajoor, and Krishna Rao of Nittali.

213. As regards the first of these, viz., Sadashiva Rao or Sadashiva Gowda, it is to be observed that there is plenty of evidence in support of the allegation of the petitioner that he assisted the respondent in his election campaign. It has already been observed that this man who is the Patwari of Mandalagiri arranged for the giving of tea and refreshment to voters of Mandalagiri on 10th March 1957. This has been spoken to by a number of witnesses and that has

been considered above. His name also appears in the reports of the Police Patel of Mandligeri and Kukkanoor. Ex. P. 167 and 168 and 333, and the former 2 exhibits are the reports of the Patel of Mandligeri, P.W. 42 Sekhar Gowda. From these reports as already seen above this Patwari has presided over the meeting when Vali Channappa had gone there and has called upon all the people to vote for the Congress candidates as he has given his promise already. From the report of the Kukkanoor Police Patel, it is to be gathered that this witness was moving about in the company of this respondent and the respondent in EP. 258/57, when those respondents were touring in the Yelburga taluk in connection with their election propaganda. It is also in evidence that this man presided over the meeting when Doddameti Andanappa had gone to Mandligeri. All these activities on the part of this patwari go to clearly show that he was assisting the respondent. His name also appears in the article in Thungabhadra, as for instance in Ex. P. 48(c). This article is about the meetings of the congress workers of Yelburga Taluk and it gives a long list of workers and in the list, the name of this man also is to be found. I feel no doubt about the fact that this man was taking very active part in carrying on propaganda in favour of the respondent during the last general election. He has done it in spite of the warning given to him by P.W. 42 Sekhar Gowda, Police Patel of Mandligeri who has stated that he warned Sadashiva Rao against his taking part in the Congress propaganda but that he did not heed it.

214. No doubt this patwari has been examined as RW. 89 as already observed and his evidence is wholly unbelievable. His demeanour in the witness box was unsatisfactory. He denied even some admitted facts and he has stated that he and Veerabhadrapa PY 143 petitioner in EP. 258/57 were not on good terms and as such this allegation had been made against him. It is not denied that P.W. 143 Veerabhadrapa had made a report against this man. But that fact itself goes to show that this witness must have got enraged against Veerabhadrapa and actively worked against him by canvassing for his opponent. On the whole, I am convinced that this Patwari has assisted the respondent in his election campaign.

215. The next Patwari that is said to have assisted the respondent in his election campaign is Guru Rao Desai of Malekop. This has been spoken to by PW 91 Advappa. This witness has stated that he knows Guru Rao Desai who is the patwari of Yerehanchinaul, Hinnal, Malekop, Rajoor and Kulkahalli; that he was the Mali Patel of Kukkanoor; that he owns a jeep and that he worked for the Congress in the last general elections. He has further stated that the respondent and Shankara Gowda had come to his village for propaganda 10 or 15 days before the polling day; that they had come to the house of Guru Rao Gowda Desai; that he was outside the house; that he does not know what talk took place between them; that the respondent went away after sometime and that then Guru Rao Desai told the witness and some three or four others who were there 'Agadi Sanganna is a candidate for the Congress Party. Give your votes to him. Tell others also to give their votes to the Congress. I have to go to all the villages once and you must come with me.' He has further stated that 5 days before the polling Guru Rao Desai started on his car to go round the villages; that the witness and one Channappa Gowda of Manapur went with him on his jeep; that he has been given a pamphlet; and that the song in it was; 'Come and vote for Congress, Kalyana Basavanna has come, Huli Channabasavanna has come, come and vote for Agadi Sanganna and Patel Shankara Gowda. He has also stated that copies of Ex. P. 79 were distributed during the tour. It is clear from the evidence of this witness that this Guru Rao Desai had been asked by the respondent to assist him in his election campaign, because it was after their meeting that Guru Rao became active.

216. An other witness PW. 56 Mallareddyappa has spoken about the activities of this Guru Rao. He is a man of Dyampur. He has stated that he had gone to Kukkanoor some days before the polling; that he met Guru Rao Desai there; that he was sitting in the Chowdi; that he called him; that he went to him; that he gave 50 or 60 copies of Ex. P. 83 and asked him to hand them over to Krishnappa Desai, Shanbhogue of Dyampur and that he brought those leaflets and gave to Shanbhogue Krishnappa and that he distributed them in the village.

217. The next witness that has spoken to the activities of this Patwari is PW 24 Shekharlah. He is no doubt a worker of Lok Sevak Sangh and he has stated that Guru Rao Desai worked for the Congress candidate Sanganna, the present respondent and Shankara Gowda. The evidence of this witness in this respect is believable because he mentions only the names of two patwaries and he says that as far as his knowledge goes it was only these 2 patwaries that worked for the Congress candidates. His name also appears in the list of the

Congress workers published in Thungabhadra as per Ex. P. 48(c). This is a paper which was published by Bangarashetty Shankarappa an agent of the respondent and as such there can be no doubt about the correctness thereof. His name is also to be found in the report of the Kulkanoor Police Patel Ex. P. 321. It is there stated he was present when the Chief Minister, Mr. Nijalingappa went to the place and he was one of the leading men of the place that received the Chief Minister and arranged for the meeting. From all this, there is no doubt that this Patwari also assisted the respondent in his election campaign. It is also in evidence that the jeep of this Patwari conveyed voters to the polling as observed above.

218. The next Patwari is one Krishnappa Desai of Matadi. He is a very big land owner and he also possesses a car. He was present at the time of Mr. Nijalingappa visited his place and he was the Chief host. He has got a photo taken with the Chief Minister Ex. P. 195. It is also alleged against this witness that he was canvassing for the respondent and as mentioned above, he is a man who went and threatened the pujari of Narasimma Devaru at Mandalgeri with eviction in case he did not vote for the Congress candidates. This Patwari has been examined and as already stated his demeanour in the box was hardly satisfactory. I am, therefore, inclined to think that this Patwari also must have assisted the respondent in this election campaign.

219. There are other witnesses who have spoken to the other patwaris. The first of them is Shivabasavva P.W. 10. She has stated, that she is a woman of Nittali and that she knows Krishnappa Shanbhogue of Masabahanchinal which is about a mile from her village, that this Krishnappa Shanbhogue of Masabahanchinal had gone to her house on the day previous to the day of polling, that he told her to vote for the Congress candidate and offered a handbill containing the symbol of a pair of bullocks; that she refused to take it as she had received the other pamphlet, that at this he got enraged and said 'You are coming to-morrow to Masabahanchinal to give your vote. Let me see how you vote'. She has further stated that the next day she went to Masabahanchinal to vote; that Krishnappa Desai was there on duty, that he told her that her name was not in the voters list and that she had no vote. She has also stated that with her there were three more female voters and that they all went back without voting that day. I think this is a woman of great rectitude because she even refused to accept the handbill with the congress symbol as she had received an other symbol from the opposite party. Her evidence cannot but be believed and it goes to show that Krishnappa Shanabhoga of Masabahanchinal was supporting the respondent. The next witness is P.W.11. Ayyappa: He is also a man of Nittali: He has stated that Krishnappa Patwari of Masabahanchinal and Dharma Rao were working for the congress and he has further stated that once Bangarashetty had come with Shankaragouda, respondent in E.P. 258/57 and that they were put up in the house of Krishnappa Desai, that Krishnappa Desai sent for him and that there were others of the village also; that Krishnappa Desai told him that he should vote for the Congress. This shows that the agent of the Respondent Bangarashetty and the Respondent in E.P. 258 had gone to Nittali and were put up in the house of Krishnappa Shanabhoga of Masabahanchinal and that then Krishnappa called this witness and others and asked them to vote for the Congress. This shows that the help of Krishnappa of Masabahanchinal was procured by the Respondent.

220. The next witness is P.W. 57 one Yemanappa Kuppar. He is a man of Rajoor. He has stated that one Ramarao Dessai is the patwari of his village and that he was Patwari at the time of the last general elections; that this Ramarao Desai and Naikappa of Channappanahalli took the voters of Channappanahalli to his village Rajur where the polling station was in two carts belonging to Ramarao and that these carts made 2 or 3 trips. The next witness is P.W.17 Veeriah. He is a man of Gangawati and he has spoken that there was a procession at Gangawati arranged by the Congress workers and that in that procession were Madhava Rao the Kulkarni of Gangawati and Advappa Kulkarni of Chikkajantkal. The next witness is P.W. 71 Guriah. He is of Nittali. He has stated that he knows Krishnappa Desai of his place and that he was working for the Respondent. He has also stated that this Patwari Krishana Rao Desai Patwari of Masabahanchinal distributed congress chits in his village a day before the polling and that on the polling day, an hour after sun rise a jeep came; that Shankaragouda Respondent in E.P. 258 and Acharaya Basappa were in the jeep and that the jeep came to Krishnappa Desai's house; that Krishnappa Desai sent word to Talarigouda, Dharma Rao, Bhim Rao and Guru Rao, through a walekar and that they all went away in a jeep. This is also goes to show that the respondent's agents actively procured the assistance of this Patwari Krishana Rao.

221. The next witness is P.W 55 Chidanandappa. He is a man of Rajur and he has stated that he knows Ramachandra Rao, who is also called Rama Rao, the Shanabhoga of Channapanahalli and that he was canvassing for the Respondent. He has also stated that Rama Rao and Naikappa had come to his keri i.e. Harijanakri 4 or 5 days before the polling, and asked them to give their votes to the respondent and Shankaragouda. He has also stated that he gave 4 copies of the booklet Ex. P.79 and that while going he drew their attention to the block on the cover and told them that Gandhi, Nehru and Patel were there; that they should respect them and give their votes to the respondents; and that if they did not give their votes accordingly that they would commit sin; that he showed him some slips containing the symbol of a pair of bullocks and asked him to vote for that symbol. He has also stated that he asked him to distribute those hand bills. This witness has also stated that Kasirao is the pattadar Kulkarni and Dattu Rao looks after the work. His name also appears in the article in Tungabhadra, dated 21st February, 1957 marked as Ex. P. 49(e) when Mr. Nijalingappa had come on a propaganda tour to those parts. From all this evidence, I feel no doubt that many Patwaris, i.e. the village officials called Shanabhogas in South Mysore canvassed and worked actively for the Respondents.

222. In this connection, there are two points to be considered as urged by the learned Advocate. firstly it was urged that mere canvassing and working for the Congress candidates would not come within the article 123(7). This is no doubt true as laid down in several decisions. But as seen above, there is evidence to show that the Respondents had gone to the house of these Patwaris some days before the polling and that they conferred with them. It is not possible of course to give direct evidence to show that the Respondent asked the assistance of these patwaris. This is also a matter to be gathered from the surrounding circumstance. The circumstances spoken to by the witness go to show that the respondents must have requested the help of these patwaris.

223. The next point urged is that some of the Patwaris were only officiating Patwaris and that some of them were Pattedar patwaris who were actually not working or looking after the duties of Patwaris. I think whether a patwari was officiating or he was pattedar patwari his assistance cannot be procured or obtained by the respondent for the furtherance of his election prospects. If so, many a Government Servant can take leave during the election period and canvass and do propaganda for any candidate. I am therefore inclined to think that the evidence goes to show that the respondent had obtained or procured the assistance of persons in the service of Government for the furtherance of the prospects of his election.

224. The next point to be considered is regarding the complaint of the petitioner against the Polling Officers, the Presiding Officers and the Returning Officers. The Petitioner has given a long list of such officer who were partial to the respondent. The first instance mentioned in the petition is that of the Presiding Officer of Koppal. It is alleged that the Presiding Officer was caught while inserting the ballot paper into the respondent's box while the paper was left outside the box by its side. It may be stated that there is no evidence in this point and no witnesses has spoken to it. The next complaint is against the Presiding Officer of Bhagyanagar Polling Station No. 27 in the area of Koppal constituency. It is alleged that this Presiding Officer had issued ballot papers from 542001 instead of 541001 and this was done in order to insert the paper of 541001 to the box whenever opportunity occurred. It must be stated that this is a fact. But I do not think the Presiding Officer would have been able to succeed in inserting the ballot papers as alleged. The next complaint is against the Presiding Officer and Polling Officers in polling station No. 28 of the Koppal area of the Parliamentary constituency. The allegation against these is that they allowed one Sri Veeranna the brother of the respondent and the President of the Koppal Municipality to enter unauthorisedly into the polling station and to indulge in exercising undue influence over the voters by canvassing for the respondent. This is spoken to by P.W. 120 Dombal Somanna. But I think the Presiding Officer has not behaved any way partial to the respondent. What P.W. 120 has stated is that he found Sri Veeranna in the compound of the polling booth speaking to the voters and from this it cannot be inferred that he was tampering with the voters. The next officer that is complained of is Polling Officer of polling station No. 28. The complaint against him is that he persisted in keeping the defective ballot box for the petitioner and would not make adequate arrangements for the safety of the box even though a complaint in this behalf was handed over to him then and there. Even in this regard there is no evidence. The next officer complained of against is the Presiding Officer of Kalloor polling station. The allegation against him is that he allowed the polling agents of the

respondent to openly canvass votes inside the booth itself by pointing to the party badges which they were wearing. Even in this regard there is no evidence except some witnesses who have stated that the petitioner's witnesses were not allowed to wear their party badges. The next complaint made is against the Presiding and Polling Officers of Hirebaigri in Sindhanoor area of this constituency. It is alleged that the ballot papers issued in respect of this polling station were found in the ballot boxes of Vecrapur polling station. Even in this regard there is no evidence. The next complaint is that the Returning Officer did not specify the names of two Ramapurs in Kusthigi area of this constituency and as a result thereof the voters of these two Ramapurs were not allowed to vote. The Returning Officer has spoken to this and he has stated that nothing of the kind alleged took place. The next complaint is against the Presiding officer of Mangaloor. It is alleged that he was a hot partisan of the respondent and that he had posted a peon inside the partition where the ballot boxes were placed with instructions to point out to every voter the ballot box of the Respondent so that they may put their vote into it. It has also been alleged that the peon was actually doing so till noon. When the petitioner reached the polling station, he warned the Presiding Officer about it and when the peon was instructed to behave well. It must be admitted that there is some evidence in this regard and it is enough to state that there is no evidence to show that this materially affected the election. There are similar allegations against the Presiding and the Polling Officers of other places also but there is no evidence to show that this attitude on the part of Polling Officers and the Presiding Officers affected materially the prospects of the Petitioner's election. It cannot be denied that some of the polling officers might not have behaved impartially as for instance the Presiding Officer of Mangaloor referred to above. On the whole, I think there is not enough evidence to prove the allegations against the Polling and Presiding Officers and that their attitude affected the prospects of the Petitioner's election.

225. The next complaint is against the Election Commission and the Chief Electoral Officer and Returning Officer and it is in connection with the allotment of symbols. The grievance of the petitioner is that the symbol of "Cart" was a free symbol that he had applied for allotting the same to him as it was not allotted to any other party, but that it was not allotted to him and that his party members without sufficient reasons. There is some force in this regard. It is clear from the notification of the Election Commission marked Ex. P. 98 that the symbol "Cart" had not been allotted to any party in Mysore State. On 1st February 1957, the date of scrutiny of nominations, the petitioner who was the President of the Loka Sevak Sangha party and who had applied for the allotment of "Cart" would not given to him. This can be seen from Ex.P.99 copy of the wireless message of the Chief Electoral Officer. From this Ex., it is to be seen that the symbol of "Cart" was allotted to the Peasants and Workers party and the petitioner was offered the "Cycle" symbol. It is to be noted that the "Cycle" symbol had already been allotted to the Peasants and Workers party. Then, the petitioner sent a wire to the Election Commission and also to the Chief Electoral Officer and Ex. P.100 is the copy of that letter. In this letter, the petitioner asked for the allotment of "Cart" and if that was not possible, he wanted the symbol of a "Cultivator winnowing grains". This was on 1st February 1957. On the same day, he received a wire from Chief Electoral Officer that the symbol of "Cart" had been allotted to the Peasants and Workers party and that he may choose any other symbol and the petitioner was told that he should approach the Election Commission for allotment of the symbol "Cultivator winnowing Grains". Then the petitioner received a telegraphic reply as per Ex. P.105, dated 7th February 1957 that symbol "Cart" would be allotted to him and that he might apply immediately. From this correspondence, it is clear that the symbol of "Cart" could have been given to the Petitioner and his party members at the very outset even. As none of the officers concerned in the matter has been examined it is not possible to find out who was responsible for this bungle. At any rate, I am inclined to believe that this affected the Petitioner's election prospects to some extent.

226. It is in evidence that Petitioner's party had been canvassing in the hope that the symbol "Cart" would be given to them. This has been spoken to by the petitioner and also P.W. 120 Dombal Somanna and P.W. 122 Srinivasa Rao and it is also in evidence that the petitioner who was elected to the Parliament in 1952 elections had got "Cart" as his symbol then. When the campaign on behalf of the Loka Sevak Sangha party had been started with "Cart" as their symbol, certainly the change of the symbol to "The agriculturist winnowing grains" should have caused confusion in the minds of the electors. This has been spoken to by P.W. 66, Balappa. He has stated that the petitioner had originally got "Cart" as symbol and that it was changed to "Agriculturist winnowing grains" and

that they were confused. The other witness that has spoken to this is P.W. 65 Ayyannagouda. He has stated that the Petitioner's symbol was "Cart" at first and then it was changed to "Agriculturist Winnowing Grains"; but this witness has not stated that he got confused on account of this change. P.W. 72 Mahadevappa is a member of the Loka Sevak Sangha party of which the petitioner is the President and he was also one of the candidates for the Assembly seat from Gangawathi during the last elections. He has stated that they began their election propaganda on the basis of "Cart" as their symbol. Then after they filed the nomination paper they were told that the "Cart" symbol would not be given to them and that he was given the symbol "Pitcher" and not even "Agriculturist Winnowing Grains". He has also stated that he was given "Pitcher" as the symbol and the other members of his party were given the "Agriculturist Winnowing Grains" and that this difference in the symbols of the candidates of the said party created confusion and doubts in the party. He has also stated that during his campaign the voters used to tell him that this party was born only yesterday and day before; that his party was not a permanent party; that if it was permanent, the candidates would have got the symbol, so they could not vote. He has added that the symbol "Agriculturist Winnowing Grains" was given to an Independent in Gangawathi constituency. This we see a lot of confusion has been caused on account of the symbol affair. Though there has been some evidence that a little amount of confusion was caused by this symbol affair, yet I think there is not enough evidence to show that it materially affected the prospects of the petitioner's election though the petitioner has stated that his defeat was primarily due to this.

227. There is yet another complaint of the petitioner and that is against the officers in charge of election. It relates to some territorial changes in the constituency and there seems to be some lapse on the part of the Returning Officer in this regard. It is admitted by the Returning Officer, Mr. Ramanathan who is examined as R.W. 76 that he sent Ex. P. 94 the list of the polling stations in the constituency on 11th February 1957 and as per that list ten villages of the Kurgoda Assembly Constituency of Bellary District had been included and that he found that this was a mistake and so he issued another list Ex. P. 97 omitting those ten villages and including ten more villages of Kampli Firka of Hospet taluk in their stead. The complaint of the petitioner is that on account of this last minute change he had to withdraw his workers from Gangawathi and other constituencies and send them on to Sirguppa for work in the additional villages. He also has complained that this change was known to the Respondent a few days earlier than he came to know. There is nothing to show that the Returning Officer had anything to do with it. There is no doubt some evidence that the petitioner had to withdraw some workers from other constituency and send them on to Sirguppa to work in these 10 villages freshly added. But there is not much evidence in support of the complaint that the petitioner lost about 30,000 votes on this account.

228. Next we come to the issue, the burden of proving which is on the Respondent. The contention of the Respondent is that the corrupt practices alleged in the petition were committed if at all by persons other than the Respondent or his election agents contrary to the orders and without the consent of the Respondent. This contention is tantamount to saying that the persons that committed the corrupt practices were not his agents and they committed them contrary to the orders of the Respondent and without his consent. Here again the question of Agency arises for consideration. It has been observed above that all persons that worked for the Respondent became his agents. Even a political organisation would become his agent. Some of these agents we have had occasion to notice in the course of the discussion above. In the first category, may be mentioned the names of Bangarasetty Shankarappa, Itigi Vadamurthy, S.M. Kotriah, editors of "Thungabhadra" "Nefaji" and Swatantra respectively. Enough has been stated about the relationship between Bangarasetty, Vadamurthy on the one side and the Respondent or the other. By no stretch of imagination can the Respondent contend that Bangarasetty and Vadamurthy were not his agents. It is also to be observed that the editor of Swatantra was also his agent. In the next category, there are the various candidates for the Assembly constituencies comprised in the Parliamentary constituency. Some of them have been examined and they have all stated that they were asking for votes during their campaigns for the Respondent also and as such they must also be considered as the agents of the Respondent. Among these may be mentioned the names of Shankaragouda who was a candidate from the Yelburga constituency, B. V. Desai who was a candidate from the Gangawathi constituency and B. E. Ramiah who was a candidate from the Sirguppa constituency. In the next category come Patwaries, various patwaries about whom mention is made above. All these patwaries have not

only canvassed by going and asking for votes to the Respondent, but also by distributing pamphlets hand bills, appeals, etc. to the electors and as such it cannot be contended by the Respondent that they were not his agents. It is in evidence as observed above that the Respondent visited some of the patwaris in their houses and took them in his conveyance, for propaganda. In the next category all the other workers that canvassed for him and helped him in his election by providing tea and tiffin to the electors by conveying them to and from the polling station by distributing clothes by providing free entertainments, by giving money to voters and in numerous other ways. There is nothing in evidence on the Respondent's side to show that the Respondent instructed any of them or any one not to indulge in any corrupt practice. As far as I remember, no witness has stated that he was instructed by the Respondent not to indulge in any corrupt practice. It is therefore clear that the Respondent is to be held responsible for the acts of these men.

229. It is also the contention of the Respondent that the corrupt practice alleged by the petitioner were of a trivial character and did not affect materially the result of the election. I fail to understand how for instance the campaign of venom, vilification and vituperation carried on against the petitioner in the "Thungabhadra" can be said to be of a trivial character or how the elaborate and widespread arrangements for tea and refreshment spoken by numerous witnesses can be considered to be of a trivial character and did not exceed the limits of customary hospitality, or how the conveyance of voters to and from the polling stations of such an elaborate scale as spoken to by the petitioner's witnesses can be regarded as of a trivial nature. It was contended by the learned advocate for the Respondent that even one instance of each kind if satisfactorily proved it would be enough to hold that the corrupt practice is established and to hold the election void.

230. It remains only to consider the contention of the Respondent. The first contention of the Respondent is that the alleged corrupt practice mentioned in petition were committed by persons other than the Respondent or his election agent contrary to orders and without the consent of the Respondent. It is enough to state in this respect that there is no evidence for the same and, as has already been held, the various persons that have committed the corrupt practices were either the workers or active agents of the Respondent. There is also no evidence to show that the Respondent took all reasonable precautions of corrupt practices. It cannot also be stated that these corrupt practices found to have been committed by the Respondent, his agents or persons interested in him were of a trivial and limited character and do not affect materially the result of election.

231. In view of the above discussion my finding on the issues are as follows:

- Issue No. 1. In the affirmative.
- Issue No. 2. In the affirmative.
- Issue No. 3. In the affirmative.
- Issue No. 4. In the affirmative.
- Issue No. 5. In the affirmative.
- Issue No. 6. In the affirmative.
- Issue No. 7. In the affirmative.
- Issue No. 8. In the affirmative.
- Issue No. 9. In the affirmative.
- Issue No. 10. Not necessary.
- Issue No. 11. In the negative.
- Issue No. 12. In the affirmative.
- Issue No. 13. In the negative.
- Issue No. 14. In the negative.
- Issue No. 15. The first part in the affirmative. Second part finding not necessary.

232. In the result I allow the petition and declare the election of the Respondent to the House of th People from the Koppal Parliamentary constituency as void under Section 98 (b) read with section 100 (1) (b) of the Representation of the People Act. The petitioner will get his costs. Advocates fee Rs. 250/-

Dictated to the Stenotypist and pronounced in open Court.

(Sd.) PUTTARAJ Urs, Member,
Election Tribunal, Raichur

New Delhi, the 30th December 1959

S.O. 59.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the Order pronounced on the 10th December, 1959 by the Election Tribunal, Nagpur.

BEFORE J. M. SHETH, ESQUIRE, B.Sc., LL.B. DISTRICT JUDGE, MEMBER
ELECTION TRIBUNAL, NAGPUR

ELECTION PETITION No. 5 of 1959

(TRANS. EL. PETITION No. 2/59)

Shri Baburao son of Tatyaji Bhonsale, aged 55 years, Journalist, resident of
Badkas Chowk, Nagpur-2—*Petitioner.*

Versus

Shri Madhav son of Shrihari Aney, aged about 78 years, occupation nil, resi-
dent of Civil Lines, Nagpur—*Respondent.*

APPEARANCES:—

1. Sarvashri D. L. Jaywant, S. G. Kukde, Advocates and Sarvashri Bhīde and Trivedi, Pleaders appeared for the *Petitioner.*
2. Sarvashri M. R. Bhode, D. R. Mandlekar, B. A. Masodkar, C. S. Dharmadhikari, G. J. Agarwal and G. B. Gandhe, Advocates appeared for the *respondent.*

JUDGMENT

Delivered this 10th day of December, 1959

1. This is an election petition, filed under section 81 of the Representation of the People Act, 1951 (hereafter, it will be referred to as the Act), by an elector of the Nagpur—Ummer Parliamentary Constituency, challenging the election of the returned candidate Shri M. S. Aney, the respondent, for the bye-election.

2. The polling was done on 31st January and 1st February 1959, for the election in question. In this election, the respondent stood as a candidate of the Congress Party and was supported by an organisation known as Vidarbha Andolan Samiti. Shri Rajabhau Khobragade was a candidate of the Samyukhta Maharashtra Samiti. Shri Awade was an independent candidate. At the poll, the respondent, Shri Khobragade and Shri Awade were the contesting candidates. The respondent did not appoint any election agent. The counting of votes took place on 2nd February 1959 and 3rd February 1959. The respondent was declared elected. The respondent secured 1,27,025 votes, Shri Rajabhau Khobragade secured 68,957 votes and Shri Haridas Awade secured 11,448 votes.

3. The election of the returned candidate was challenged on the ground that the respondent, his agents and other persons, with his consent, had committed several corrupt practices.

In para 6 of the election petition, the allegations made are, as under:—

In the course of the propaganda carried out by the respondent for his election, systematic appeals were made by the respondent and, with the consent of the respondent by his agents and other persons, who were canvassing votes for him, to vote for the respondent and to refrain from voting for Shri Rajabhau Khobragade on the grounds of caste, race, community and religion. The respondent and with his consent, his agents and other persons working for him, used the election symbol of the respondent namely, two bullocks with yoke on, and appealed to it as a symbol of Buddhist religion and the Hindu religious symbol of cow was used and appeal made to it for the furtherance of the prospects of the respondent's election. These appeals, uses and appeals were made at various meetings held at Nagpur and other places particulars of which are given in Schedule I by articles and items published in the newspapers (filed herewith), viz., *Dainik Vidarbha Andolan* and *Daily Maharashtra*, published at Nagpur, particulars of which are given in Schedule II, and by pamphlets and handbills published at Nagpur, the particulars of which are given in Schedule III.

In the same issues of the said daily, The Dainik Vidarbha Andolan, detailed in Schedule IV, the Editor and Publisher of the paper, published with the consent of the respondent, statements of fact which were false and which the respondent and the persons editing and publishing the newspaper believed to be false or did not believe to be true, in relation to the personal character and conduct of

Shri Rajabhau Khobaragade and in relation to his candidature. The statements were reasonably calculated to prejudice the prospects of Shri Rajabhau Khobaragade's election.

The respondent, and with the consent of the respondent, his agents and other persons hired or procured, on payment or otherwise vehicles for the conveyance of electors other than the respondent himself, the members of his family and his agents, to and from the Polling Stations and places fixed for the poll, mentioned in Schedule V.

The respondent incurred and authorised expenditure in connection with the election, in contravention of section 77 of the Act. The particulars as to such contravention are given in Schedule VI. On the dates on which the poll was taken, the respondent and with his consent, his agents and other persons working for him exhibited on the ballot chits, issued by them to persons intending to vote at the election, the election symbol of the respondent, within the polling stations and in public and private places, within the distance of 100 yards from all the polling stations, in contravention of section 130(1)(c) of the Act. Thereby, the respondent and with his consent, other persons working for him, interfered or attempted to interfere with the free exercise of the electoral right and committed the corrupt practice of undue influence.

On these grounds, the respondent's election is liable to be declared void.

4. In para 12 of the election petition, it is further contended that the electoral rolls prepared for the election were extremely defective in that, they excluded the names of thousands of persons, who are eligible to vote, at the election from different wards, excluded all the voters from several localities, and gave grossly inaccurate descriptions of persons, whose names were included in the electoral rolls. Polling booths for a number of voters were kept so far away from their places of residence that a number of them were unable to vote at the election.

In para 13 of the petition, it is alleged that sufficient number of polling stations were not kept, to enable all the persons eligible to vote to exercise their right of vote.

The Rules made under the Representation of the People Act, 1951 adding rule 41-A were not placed before both the Houses of the Parliament, as required under section 169(3) of the Act. Polling Officers and Presiding Officers at the various polling stations did not overlook mere clerical or printing errors in the electoral rolls in deciding the right of a number of persons to obtain a ballot paper, though identity was sufficiently established.

In para 16, it is alleged that, on account of the commission of the aforesaid corrupt practices and the instances of non-compliance with the provisions of the Constitution, the Act and the Rules and Orders, made under the Act, the result of the election in so far as it concerns the respondent has been materially affected.

The prayer made was that the election of the respondent be declared void and the costs of the petitioner be saddled on the respondent.

5. The respondent by his written statement Ex. 2, denied the commission of any of the said corrupt practices. He denied that he consented to any editor and publisher, publishing in any newspaper, statements of fact in relation to the candidature and personal character and conduct of the candidate, Shri Rajabhau Khobaragade and that those statements were so published, although believed to be false and not believed to be true. It was denied that such statements were reasonably calculated to prejudice the prospects of Rajabhau Khobaragade's election. It was denied that they were statements in relation to the personal character and conduct of Shri Rajabhau Khobaragade. He denied that he or, with his consent, his agents or other persons working for him, used in appeal an election symbol, in the manner and for the purpose alleged by him. He did not consent to the doing of such things at meetings set out in Schedule I of the petition, nor by articles or newspapers referred to in Schedule II of the petition, nor by pamphlets and handbills described in Schedule III of the petition. He denied that he, his agents and other persons hired or procured, as alleged by the petitioner, vehicles for conveying electors to and from places set out in Schedule V of the petition. He denied that he incurred or authorised expenditure in connection with the election in contravention of section 77 of the Act. He denied that he incurred or authorised expenditure as stated in clauses 1 to 7 of the Schedule VI of the petition. The allegations are vague and indefinite. Some of the remaining clauses are outside the scope of the election petition and are liable to be struck off, as

they are irrelevant. He denied that the respondent or, with his consent, his agents and other persons working for him, did anything of the kind, as alleged, so as to contravene section 130(1)(e) of the Act. He denied that he or, with his consent, other persons working for him, interfered or attempted to interfere with the free exercise of the electoral right and committed corrupt practice, under undue influence. He denied that the electoral rolls prepared for the election was not in order, as alleged. He denied that the polling booths for the election, as fixed, were fixed at unduly long distances from voters' residential places and a number of them were consequently unable to vote. The electoral roll is prepared under the Representation of the People Act (No. 43 of 1950), non-compliance with which, cannot be made a ground of election petition, under section 100(d)(iv), of the Representation of the People Act, 1951. He denied that sufficient number of polling stations had not been provided so as to enable all persons eligible, to exercise their right to vote.

He denied that the result of the election was materially affected by reason of corrupt practices and non-compliance with law, such as, has been alleged by the petitioner.

The verification in respect of paragraphs 6-8, 10, 12 and 13 was not according to law. Averments in paragraphs 6 and 8 of the petition are far too general, vague and indefinite. Requisite particulars have not been given in the Schedules II, III and V. The averments in paragraphs 10, 12, 13 and 16 are in the above respect still worse, not being supported by the pretence of any such schedule of particulars. In paragraphs 6 and 8 of the petition and relative Schedules II, III and V, referred to above the petitioner has not also averred, which acts were committed by the respondent and which by his agents and which by other persons, working or canvassing for the respondent. It is not even stated by the petitioner, who those agents and persons were. Consequently, the aforesaid averments are likely to be struck off. The averment in the first sentence of para 6 of the petition does not constitute an averment of corrupt practice in terms of Section 123(3) of the Act and consequently, it is liable to be struck off.

The petition is also liable to be dismissed inasmuch as the same has been presented to the Election Commission, neither by the petitioner, nor by a person authorised by the petitioner in writing, in the manner required. The charges made against the respondent are all false, fanciful and frivolous. He did not proceed with the idea of having, as he first contemplated, an election office of his own, the Congress organisation in the electorate being, as he found, more than sufficient for his requirements. If any persons, bodies, papers or speakers or such other agencies made a propaganda of this kind, they made it, if at all, for themselves and on their own account and not in the respondent's behalf or at his instance or with his consent. Rather, as he gathered, it was the candidate Rajabhai Khobaragade, his Republican Party, Samyukta Maharashtra Samiti, papers like 'Marhatta' and his other agencies, who first started against the respondent virulent and vituperative campaigning, both in the press and on the platform, which unsportsman-like conduct on their part, was itself independently instrumental in alienating and offending various sections of the electorate, disputations, if there were, being between those two sides, to which, however, the respondent was certainly not a party directly or indirectly. At all events, it is not the so-called corrupt practices or non-compliances with law, alleged by the petitioner in the petition, which have affected the result of the election. Even otherwise, the respondent was bound to succeed and Rajabhai Khobaragade was bound to fail.

The petition should, therefore, be dismissed with costs.

6. On 25th July 1959, the petitioner gave an application Ex. 4 under section 90(5) of the Act, for amendment of his election petition. That application was opposed by the respondent. He filed his written statement raising objections, at Ex. 9 and Ex. 9-A. By an order Ex. 12, dated 26th August, 1959 I allowed some of the amendments. For a fair and effective trial of the petition, the petitioner was allowed to amend his petition, for giving fuller better particulars referred to, in the order. They were allowed on condition that the petitioner will pay Rs. 100/- to the respondent, irrespective of the ultimate result of the election petition. Other amendments sought for, referred to in the order, were disallowed. The petitioner, thereupon, made the amendments in the Schedules, for the amendments allowed.

The respondent, thereupon, gave an additional written statement Ex. 14, denying the allegations made. The amended written statement is Ex. 15. The petitioner gave draft issues at Ex. 19. The respondent gave draft issues at Ex. 20. After hearing the parties, I passed an order Ex. 21, stating the issues for which the parties will go to the trial.

7. The issues framed are as under:—

ISSUES

1. Does the petitioner prove that he is a voter enrolled on the electoral roll for the Nagpur Parliamentary Constituency?
2. Does the petitioner prove that the respondent and with the consent of the respondent, the persons mentioned in the Schedule I, made systematic appeals to the voters to vote or refrain from voting on the ground of caste, race, religion or community for furtherance of the prospects of the election of the respondent in the meetings, as alleged in para 6 of the election petition, within the meaning of sub-section (3) of section 123 of the Representation of the People Act, 1951?
3. Does the petitioner prove that the respondent and with the consent of the respondent, the persons mentioned in the Schedule II made systematic appeals to the voters to vote or to refrain from voting on the ground of caste, race, religion or community for furtherance of the prospects of the election of the respondent as alleged in para 6 of the election petition and Schedule II of the petition, by the publication of the articles and items published in the newspapers referred to therein, within the meaning of sub-section (3) of section 123 of the Representation of the People Act, 1951?
4. Does the petitioner prove that the respondent and with his consent, the persons mentioned in Schedule III made systematic appeals to the voters to vote or to refrain from voting on the ground of caste, race, religion or community for the furtherance of the prospects of the election of the respondent as alleged in para 6 of the election petition and Schedule III of the petition, by pamphlets and hand-bills referred to therein, within the meaning of sub-section (3) of section 123 of the Representation of the People Act, 1951?
5. Does the petitioner prove that the respondent and with the consent of the respondent, persons referred to, in the Schedules I, II, III of the petition used the election symbol of the respondent viz., two bullocks with yoke on and appealed to it as a symbol of Buddhist religion and the Hindu symbol of cow was made and appeal made to it for the furtherance of the prospects of the respondent's election, within the meaning of sub-section (3) of section 123 of the Representation of the People Act, 1951?
6. (i) Does the petitioner prove that with the consent of the respondent, persons mentioned in Schedule IV (para 7 of the petition) of the election petition published statements of facts in the documents referred to therein, which were false and which the respondent and other persons referred to therein, believed to be false or did not believe to be true, in relation to the personal character and conduct of the candidate Shri Rajabhai Khobaragade and in relation to his candidature?
- (ii) If so, whether they were statements reasonably calculated to prejudice the prospects of the said candidate?
7. Does the petitioner prove that the respondent incurred and authorised expenditure in contravention of section 77 of the Representation of the People Act, 1951, referred to, in para 9 of the election petition and Schedule 6 para 6, clauses (a) to (j)?
8. (i) Does the petitioner prove that the respondent committed the irregularities or illegalities referred to in Schedule VI, paras 1 to 4 and thereby, contravened the provisions of section 77 of the Representation of the People Act, 1951?
- (ii) If so, whether it has materially affected the result of the election?
9. Does the petitioner prove that the respondent exhibited on the ballot chits issued by him to persons intending to vote at the election, his election symbol, within the polling stations and in public and private places within the distance of 100 yards from all the polling stations in contravention of section 130(1)(e) of the Representation of the People Act, 1951 and thereby, interfered or attempted to interfere with the free exercise of voting and committed the corrupt practice of undue influence, within the meaning of sub-section (2) of section 123 of the said Act?

10. (i) Does the petitioner prove that the electoral roll prepared for the election was defective as to exclude the names of thousands of persons eligible to vote and also as to give grossly inaccurate description of persons whose names were included in the electoral roll?
 - (ii) If so, what is its effect?
 - (iii) Whether the petitioner can raise this ground, for supporting the relief claimed?
11. (i) Does the petitioner prove that the polling booths were not in sufficient numbers and also were far away from the places of residence, with result that a number of voters were unable to vote at the election?
 - (ii) If so, what is its effect?
12. (i) Does the petitioner prove that the Rules made under the Representation of the People Act, 1951, adding Rule 41-A, were not placed before both the Houses of Parliament as required by section 169(3) of the Representation of the People Act, 1951?
 - (ii) If so, what is its effect?
13. (i) Whether the Polling Officers and the Presiding Officers at various polling stations did not overlook merely clerical and printing errors in electoral rolls?
 - (ii) If so, what is its effect?
14. Does the petitioner prove that the result of election has been materially affected on account of (i) the commission of any corrupt practices referred to above or (ii) non-compliance with the provisions of the Constitution, the Representation of the People Act, 1951 or Rules made thereunder?
15. Is the respondent's election liable to be declared void?
16. What order as to costs?
17. What final orders?

8. The respondent gave an application Ex. 23, to dismiss the election petition under section 90(3) of the Act. The contention taken up in this application Ex. 23, by the respondent, was that the petitioner had not joined as respondent, the candidate Haridas Awale, against whom allegations of corrupt practice have been made in the petition, as required by section 82(b) of the Act. The petition should, therefore, be dismissed and it could not be further proceeded with. This application was given by the respondent on 14th September 1959. The petitioner gave a reply to this application by Ex. 24, on 21st September 1959. He contended that he objected to the hearing of this application Ex. 23 on the ground that the objections referred to therein, had not been taken by the respondent, in his written statement. The application cannot now be heard, as the objection is not included in any of the issues framed by the Tribunal on 11th September, 1959. The Tribunal was bound to proceed further with the trial of this petition and to decide in any case whether the alleged corrupt practices have been committed and, if so, by whom. It was denied that the petitioner had made any allegation in the petition that the candidate Haridas Damaji Awade had committed any corrupt practice. Section 82(b) had no application in respect of the amendment of the petition, allowed by the Tribunal. The petition could not be dismissed under any provision of law, on account of the amendment made. Any amendment of the petition, to the effect that the candidate Haridas Damaji Awade had committed corrupt practice could not have been allowed by the Tribunal and would be outside the scope of the allegations in the petition. He has no objection to join the candidate Haridas Damaji Awade as a respondent or to issue of a notice of the petition to him. On the same day, he gave a second application for amendment of the petition. The allegations made in this application for amendment of the petition were as under:—

In para 6 of the petition filed before the Election Commission, the petitioner had alleged the corrupt practice mentioned in section 123(3) of the Representation of the People Act, 1951. He had alleged in that para, amongst other things, that

in the course of the propaganda carried on by the respondent for the election, this corrupt practice was committed by the respondent and, with his consent, by his agents and other persons, who were canvassing votes for him by the publication of articles and items mentioned in Schedule II of the petition and the pamphlets and handbills mentioned in Schedule III. Similarly in para 7 of the petition, he had alleged that the editor and publisher of the Dainik Vidarbha Andolan in the issues of the paper mentioned in Schedule IV of the petition had published, with the consent of the respondent, certain statements and had thereby committed the corrupt practice mentioned in section 123(4) of the Act.

As it was pointed out to the petitioner that the petition was lacking in certain particulars of the corrupt practices alleged in the petition, he applied on 26th July 1959 (Ex. No. 4) to supply the particulars which were by mistake left out. Even though the allegations in the petition were confined as stated above, while giving the particulars in Schedule II, the petitioner gave the names not only of the publishers of the papers, but also of the authors of the matters published in the papers and of other persons. Similarly, in Schedule III, he gave the names of the authors of the two handbills and in Schedule IV the names of authors of certain matters published in the Dainik Vidarbha Andolan and of other persons. It did not strike anybody concerned at the time that the allegation made against the authors of these matters was outside the scope of the allegations made in the petition, as originally filed. Most of the amendments sought to be made in the petition were allowed by the Court on 26th August 1959. The petitioner now wants to delete these superfluous names.

On scrutiny of the particulars, the petitioner also finds that, in Schedules II and IV, it was wrongly stated by the petitioner that the corrupt practice was alleged in that schedule.

The petitioner also cited 26 names in the Schedule II, 2 names in Schedule III and 7 names in Schedule IV without sufficient attention to the fact that all these those persons must be proved to have made the appeal or use with the consent of the respondent even in order that the acts alleged against them, should amount to a corrupt practice. The petitioner wants to rectify this mistake by confining the names of those, who committed the corrupt practice, to the respondent and Shri T. G. Deshmukh, the editor, printer and publisher of the Dainik Vidarbha Andolan, for the commission of the corrupt practices, alleged. Reference to the Daily Maharashtra paper, for the commission of a certain corrupt practice, was also sought to be deleted.

The respondent opposed this second amendment application, by his written statement Ex. 27, filed on 23rd September 1959. As it was sought to be urged on behalf of the petitioner, that Haridas Awale referred to in the Schedule for the commission of corrupt practice was a person other than a contesting candidate and his reply Ex. 24 to the application Ex. 23 was vague in that respect, I passed an order Ex. 28, on 23rd September 1959, making the following observations:—

"In the course of the arguments advanced at the Bar, on behalf of the respondent and the petitioner, the respondent urges that the relevant allegations made in the election petition and the relevant schedule refer to the candidate Haridas Damaji Awale or Awade. It is the argument of the learned advocate Shri Jaywant for the petitioner that the allegations made by him in the relevant paras of the election petition and the relevant schedule do not refer to the candidate Haridas Damaji Awade or Awale. They refer to one Haridas Awale and he is not a person, who was the candidate in the election in question. The allegations made by the petitioner in this reply Ex. 24 in para 2 are a bit ambiguous. It cannot be definitely made out therefrom, whether the petitioner challenges the identity of Haridas Damaji Awade or Awale referred to, in the allegations. Before proceeding with this question, in the interests of justice, it is necessary to know from the petitioner, in clear and unambiguous terms, whether the allegations made in the election petition and in the Schedule II, refer to the candidate Haridas Damaji Awade or Awale or they refer to another person named Haridas Awale other than the candidate Haridas Damaji Awale. The petitioner was thereupon directed to make this position clear, by filing another written statement, with proper verification.

The petitioner, thereupon, made the statement Ex. 29, to the following effect:—

"The allegation of corrupt practice made by him in the petition amended on 28th August 1959 is made against one Haridas Awale, the author of the item entitled, "Khobragade Na Mat Dewoon Paksha Droha Wa Dharma Droha Karoon Naka" and published in Dainik Vidarbha

Andolan dated 26th January 1959 and not against Haridas Damaji Awade one of the contesting candidates in the election, who is a different person.

By an order Ex. 30, I passed an order to frame an additional issue making the following observations:—

"Consequent upon the oral order passed by me today below Ex. 24, the reply to the application Ex. 23, of the respondent, the petitioner by his statement Ex. 29 has stated as under:—

"That the allegation of corrupt practice made by him in the petition amended on 28th August 1959, is made against one, Haridas Awale, the author of the item entitled, 'Khobragade Na Mat Dewoon Paksha Droha Wa Dharma Droha Karoon Naka' and published in Dainik Vidarbha Andolan dated 26th January 1959 and not against Haridas Damaji Awade, one of the contesting candidates in the election petition, who is a different person."

The respondent's contention is that the allegations made are with reference to the candidate Haridas Damaji Awade and none else. This fact being a controversial question between the parties, it is necessary to frame the following additional issue:—

ADDITIONAL ISSUE

Whether the respondent proves that the allegations made in para 6 of the election petition and the Schedule II of the election petition, regarding the corrupt practice, are the allegations made against the candidate Shri Haridas Damaji Awade or Awale?

If so, whether the petition is liable to be dismissed under section 90(3) of the Representation of the People Act, 1951, on account of the non-joinder of this candidate as a party to the election petition?

This issue was to be numbered and added as Issue No. 15-A to the original issue No. 15 framed on 11th September 1959.

9. By an order dated 24th September 1959, Ex. 31, I rejected the second amendment application Ex. 25, filed by the petitioner, and ordered the petitioner to pay Rs. 50/- to the respondent by way of costs, irrespective of the ultimate result of the election petition.

10. For the aforesaid issues, the parties went to the trial. The petition was fixed for evidence on 28th September 1959. On that date, the date fixed for recording evidence, the respondent gave an application Ex. 55 to the following effect:—

The additional issue in the case is vital to the decision of the election petition since the trial of the rest of the issues will become necessary only, in case, the finding on the aforementioned additional issue is in the petitioner's favour. Whereas, if the same is against the petitioner, the election petition will have to stand dismissed. In these circumstances, the respondent submits that evidence on the said additional issue should be received first which the respondent is prepared to lead forthwith without there being any need, at any rate, for the present, for examining the rest of the evidence on other issues on either sides.

I rejected this application of the respondent on the ground that it was given, when the actual recording of evidence was to start and several witnesses were summoned for giving evidence. The question arising is a question, which cannot be decided, without recording evidence. Several documents, which are to be admitted into evidence for the decision of all the issues framed, are also required for the decision of this issue. This election petition could not be heard early, on account of a member of the Tribunal appointed, on ceasing to hold the position of a District Judge, Nagpur. Such election petitions are to be disposed of, expeditiously. Top priority was, therefore, given for hearing of this petition and that was the main work kept for its expeditious disposal. Taking into consideration all these circumstances, it is not convenient and not proper to hear this issue at such a late stage, as a preliminary issue, and record evidence only on that issue.

The evidence led by the parties on all the issues came to be recorded. On 21st October 1959, recording of evidence was completed and the case was fixed

for hearing the arguments on 27th October 1959. On 25th October 1959, the respondent gave an application Ex. 331. In para 1 of this application, it is stated that the respondent has already lodged an objection in his application dated 14th September 1959 (Ex. 23) that the petitioner's election petition could not be proceeded with and was liable to be dismissed for the petitioner's omission to implead one of the candidates Shri Haridas Damaji Awale or Awade, as a respondent.

In para 2, it is stated that the respondent further finds that one other candidate Shri N. L. Belekar, Advocate, against whom the petitioner has made allegation of corrupt practice in the petition (Schedule I) and who has since been examined as respondent's witness No. 3, has also not been joined as respondent, as he must have been joined. For this reason also, the petition is liable to be dismissed under section 90(3) of the Representation of the People Act, 1951.

He, therefore, prayed for an order, accordingly.

To this application, the petitioner filed a reply Ex. 333. The contents of the para no. 1 of Ex. 331 were admitted. It is, in para 2, stated that it is admitted that Shri N. L. Belekar has not been joined as a respondent to this petition. It is, however, denied that Shri Belekar is a candidate. Shri Belekar withdrew his candidature under section 37 of the Representation of the People Act, 1951 and thereby, he ceased to be a candidate. The petitioner has not also made any allegation that Shri Belekar committed the corrupt practice, as a candidate. The allegations against Mr. Belekar are also not made in his capacity as a candidate. It is, therefore, not necessary for the petitioner, to join him as a respondent. The petition was not liable to be dismissed under section 90(3) of the Act or under any other provisions of the Act. Any amendment of the petition to the effect that Shri Belekar has committed a corrupt practice previously alleged in the petition, could not have been allowed by the Tribunal and would be outside the scope of the allegations in the petition. The objection not having been raised by way of the amendment of the respondent's written statement, cannot be entertained by an application. The objection being also outside the scope of the issues framed, cannot be heard.

He has no objection to join Shri Belekar as a respondent to the petition or to issue notice of this petition to him, if the Tribunal thinks it necessary in the interests of justice or in consequence of the allegations made against Shri Belekar.

The arguments of the advocates appearing on behalf of the parties were heard on these issues and also contentions raised by the respondent in this application Ex. 331.

11. The points that arise for determination, therefore, are the issues referred to in para 7 and the additional issue 15-A, which runs as under:—

Whether the respondent proves that the allegations made in para 6 of the election petition and the Schedule II of the election petition, regarding the corrupt practice, are the allegations made against the candidate Shri Haridas Damaji Awade or Awale?

If so, whether the petition is liable to be dismissed under section 90(3) of the Representation of the People Act, 1951 on account of the non-joinder of this candidate as a party to the election petition?

Another point for determination that arises, in view of the application Ex. 331, is as under:—

(1) Whether the respondent proves that allegations made in para 6 of the election petition and the Schedule I of the election petition are the allegation of corrupt practice made against Shri N. L. Belekar, the candidate?

(2) If so, whether the election petition is liable to be dismissed under section 90(3) of the Representation of the People Act, 1951, on account of the non-joinder of this candidate as a party to the election petition?

12. As the additional issue No. 15-A and the other point for determination, which is referred to above, are the issues, which, if decided in favour of the respondent, will go to the root of the case, I propose to discuss and decide those issues, first.

The material allegations made in this connection are in para 6 of the election petition. The particulars of this instance are given in Schedule II, at serial No. 5. The article or item referred to, runs under the caption, 'Khobaragade Na Mat

Dewoon Paksha Droh Wa Dharma Droha Karoon Naka' (खोबरागडेना मत देऊन पक्ष द्रोह व धर्म द्रोह करू नका) It is published on page 1 of Dainik Vidarbha Andolan issue, dated 26th January 1959, Ex. 89.

The respondent's contention is that these allegations of corrupt practice are made against the contesting candidate Haridas Awale and none else. It is the petitioner's contention that these allegations are not made against the candidate Haridas Awale. It is made against another person. It was suggested that the candidate is Haridas Awade. In the Schedule II, the name of the author of this article given, at serial no. 6, is Haridas Awale. It was sought to be urged at one time that Haridas Damaji Awade and Haridas Awale denote different persons having different surnames. It was also sought to be urged that a person referred to was a reporter of the speech referred to, in this article or item. I will consider the evidence adduced by the parties in this connection. It is true that, in the election petition filed by the petitioner, one of the contesting candidates shown in para 3, is Haridas Damaji Awade, and Awade was shown to be an independent candidate. In the Schedule II, the author of the item in dispute is described as Haridas Awale. It was the respondent's contention that in Marathi, a person having this surname, is being spelt as आवडे (Awade) or आवल Awale.

and in English, it is spelt as Awade or Awale. In the written statement Ex. 2 filed by the respondent, in para 3, this candidate is referred to as Haridas Damaji Awade standing as an independent (candidate). In para 5, it is stated that this Haridas Awade secured 11,448 votes.

13. The petitioner Baburao's evidence has been recorded at Ex. 38. In examination-in-chief, the petitioner has referred to this item No. 5 of Schedule II, published in Dainik Vidarbha Andolan issue no. 7, dated 26th January 1959, at page 1, under the caption, "Khobaragade La Mat Dewoon Paksha Droh Wa Dharma Droha Karoon Naka" (खोबरागडे ला मत देऊन पक्षद्रोह व धर्मद्रोह करू नका)

In para 22, he has referred to the same item No. 5, published in the same issue on page 3, under the caption, "Boudhano Khobaragadeana Mate Dewoo Naka" (बौद्धाना खोबरागडेना मत देऊ नका)

He has further stated that, in both these articles, appeal is made to Buddhists, on the ground of religion, not to vote for Khobaragade. In the examination-in-chief, he did not refer to this controversy regarding the question, whether it referred to a person other than a contesting candidate Haridas Damaji Awade. In para 47, in cross-examination, he has stated that, in the present election, the candidates were Bapuji Aney, Rajabhau Khobaragade and Haridas Awade. In Marathi also,

he states that he spells his surname as आवडे, (Awade). The petitioner reads आवले as Awale in English. He had filed the election petition after reading all the issues of Dainik Vidarbha Andolan and the issues of Dainik Maharashtra, which he has filed with the election petition. He always used to read the Maratha paper. Without seeing those issues of Maratha paper, he cannot say, how this candidate Haridas Damaji Awade was referred to therein, in Marathi language. He was the press manager of this Maratha paper at the time of the election. Even today, he is the circulation manager of that paper. He does not remember, how these three candidates were being referred to in Dainik Vidarbha Andolan, or in Daily Maharashtra. Whatever newspaper issues, he has produced, he has produced them after reading them. This Haridas Damaji Awade is a present member of the Bombay Legislative Council. He is a member for the last four years. It is not true that he is a member on behalf of the Samyukta Maharashtra Samiti. This Haridas was about one year back, the leader of the Republican Party. At the time of this election, he was not a leader of the authorised Republican Party. At the time of this election, Rajabhau Khobaragade was a leader of the authorised Republican Party. He has no idea, what were the dissensions between this Haridas Awade and Rajabhau Khobaragade at the time of the election. Shivraj is the President of the Republican Party of India. He does not know, whether, during this election, Shivraj had come to Nagpur or not. Khobaragade had stood as a candidate of the Samyukta Maharashtra Samiti, in this election, Republican Party was a constituent part of the Samyukta Maharashtra Samiti. Its object is to achieve one State for Marathi speaking people, as other thirteen

unilingual States have been formed. It does not believe in having two different States for the Marathi speaking States. He cannot say, whether its object conflicts with the achievement of the Marathi speaking people of Vidarbha.

By the demand of the separate State of Vidarbha, referred to, in the issues of Dainik Vidarbha Andolan, he understood that, State formed of 8 districts, that is Nagpur, Bhandara, Chanda, Wardha and four districts referred to by him, namely, Amravati, Akola, Buldhana and Yeotmal. The object of Samyukta Maharashtra Samiti was that these districts should also form a part of the Marathi speaking State. For that object, the propaganda was made by the newspapers Tarun Bharat, Maratha and Dainik Maharashtra. The main propaganda was made by Tarun Bharat and Maratha papers.

He admits that the issues of Maratha, filed at Ex. 50 to Ex. 65, are the Maratha issues published by their press. He refers to the issue Ex. 50 and states that at the top, it is stated that it is a fighting mouthpiece for Samyukta Maharashtra. Similarly, in the issues of Dainik Vidarbha Andolan, on the top, it is stated that it is for the creation of a separate State of Vidarbha. On reading those two papers, he could make out that there was difference in thoughts and principles and they were making propaganda against each other.

In para 52 of his deposition, after reading para 2 of column 2, page 2 of the issue Dainik Vidarbha Andolan dated 19th January 1959, beginning with the words "राजाभाऊ खोबरागे हे रीपब्लिकन पक्षाचे आहेत" ending with the words

"आमदार ह्यांचा बाबू आवले यांनी ही एकाकी उमेदवारी आहे" he states, by reading it, he understood that this reference was to the candidate Haridas Damaji Awade. He, thus, admits that in Marathi language in this paper Dainik Vidarbha Andolan, this Awade is referred to as आवले.

In para 53, after reading para 3 of column 5, page 4 of the issue of Dainik Vidarbha Andolan dated 21st January 1959, beginning with the words "आवल्यांनी आपल्यालाच बरें छापी मजूम सभासद प्रचार सुरू केला आहे" he understood thereby that it referred to the candidate Haridas Awade. In para 54, he states that in that very paragraph, there is a mention that will get 95% of Buddha votes as against Khobaragade. It refers to this very candidate Haridas Awade. He, thus, admits that in that paragraph of Dainik Vidarbha Andolan, this very candidate Haridas Awade is referred to as आवले. In paragraph 55, he states that in the issue of Dainik Vidarbha Andolan dated 22nd January 1959, on page 1, there is a reference to the conflict between the two groups, one headed by Amdar Haridas Babu Awade and the other group headed by Meshram Advocate. It refers to the candidate Haridas Awade आवले. People of Khobaragade group referred to, therein are the people of the group headed by Meshram. People of Haridas Babu Awade referred to, therein are the people of the candidate Haridas Awade. One Janorkar is referred to therein, as belonging to the group of the candidate Haridas Awade (आवले).

In para 56 he states that, in the issue of 26th January 1959, page 1, in the article under the caption "आवले यांची नवबुद्धीना चेतवणी" he refers to the candidate Haridas Awade. It is true that the report made therein is of the speech of the candidate Haridas Awade.

In para 57, he states that he refers to the page 3 of the same issue under the caption "बौध्दांनी खोबरागेना मत देऊ नका"

In it, the reference is made about an appeal by Janorkar and Shambarkar M.L.A. to the voters not to vote for Khobaragade. Reference is made therein to the group of Haridas Awade, the candidate. "आमदार" means M.L.A. or M.L.C. At the time of this election, that candidate Haridas Damaji Awade was the member of the Legislative Council. That is why, he is being described as Amdar. He then makes an admission that, to his knowledge, there was no other Haridas Damaji Awade (आवले) who was a members of the Legislative Assembly or Council. He thus admits in an unambiguous terms that except a contesting candidate

Haridas Awade, there was no other Haridas Awale **आवले** who was a member of the Bombay Legislative Assembly or Council. On pages 1 and 3 of his issue, reference made regarding **(आवडे)** is in respect of the same person and that person is the candidate Haridas Damaji Awade. He knew that it referred to the Haridas Awade candidate. He again being confronted with those statements, came forward with a story that it was not true that due to it, he referred to him in Schedule II, at serial No. 6, in his election petition. He does not personally know about any other man, having the name Haridas **आवले**. He thus admits that a person known to him personally was only Haridas **आवले** and none else. In Schedule II, he has verified that persons referred to in Schedule II, as having committed corrupt practices, are persons true to his personal knowledge. It is thus an admitted position that the information given by him in this Schedule regarding the persons, who had committed corrupt practices, were the persons true to his personal knowledge. He does not know where Haridas Awale **(आवले)** referred to by him therein, resided or resides. In his life time, he has never met such a person upto date. He has no personal knowledge that any such other person besides the candidate Haridas, existed or exists.

In his statement Ex 29, he has written that the allegations of the corrupt practice made by him in the petition amended on 28th August 1959, are made against one Haridas Awale, the **(आवले)** author of the item entitled "खोबरागडेला मत देऊन पक्ष छोडू व बर्मा प्रोड करू नका" and published in Dainik Vidarbha Andolan dated 26th January 1959 and not against Haridas Damaji Awade, one of the candidates, who is a different person. He has verified it and stated that it is true to his personal knowledge. After 2 or 3 days of this publication dated 26th January 1959 of Vidarbha Andolan issue No. 7, he came to know from somebody that some person named Haridas **आवले** has made this report to this newspaper and that is why, he has mentioned in his Schedule, as the author of that article.

In para 59 he states that, in Maratha paper, the candidate Haridas Damaji Awade is sometimes referred to as **आवडे** and some times as **आवले**. It is, thus, evident that in his own paper, Haridas Damaji Awade was sometimes referred to as **आवले** and some times as **आवले**. He was shown the Maratha issue dated 9th January 1959 Ex 52. Awade **(आवडे)** referred to in the headlines, "Shri Awale Akher Pot Niwadnukitun Maghar Ghonar श्री आवले अवले पोटाविड नुकीतून माघार वेणार" refer to the candidate Awale and none else. Its meaning is that ultimately this Awale is going to withdraw from this bye-election. It is further reported therein that it is learnt that under the directions of Shivraj the President of the Republican Party, Shri Haridas Awale is going to withdraw definitely from this Nagpur-Umrer bye-election. It is stated therein that Rajabhai Khabragade is the authorised candidate of the Republican Party and hence Shri Shivraj has directed Shri Haridas Awale to withdraw. It is learnt from reliable source. It is stated therein further that, as Shri Haridas Awale is to withdraw, it is cent percent guaranteed that Samiti (meaning thereby Samyukta Maharashtra Samiti) will succeed. In this election, Haridas Awale did not withdraw and fought the election upto the last.

He then admits in para 60 of his deposition, that this Maratha paper was making election propaganda against Haridas Awale and Mr. M. S. Aney, for the election success of Mr. Rajabhai Khobragade. In para 61, he states that, after seeing all the issues of Dainik Vidarbha Andolan filed by him, he states that in none of them, any propaganda is made against the candidate Haridas Awale. On the contrary, in the issue No. 1, dated 19th January 1959, in the leading issue, he is described as a renowned and bright leader amongst the Buddhists. He admits that in these issues of Dainik Vidarbha Andolan, the speeches and the statements of the persons of the group of Mr Haridas Awale are reported. It is true that by one or two issues of that paper, Haridas Awale was also gaining in his election propaganda, just as Mr. Aney was gaining.

In para 62 of his deposition, he again makes an admission in an unambiguous term that every time he reads the reference about Awale in these issues of Dainik Vidarbha Andolan, he always had an idea that the reference was to the candidate Haridas Awale. He does not know what was the opinion of Haridas Awale, regarding the formation of the Samyukta Maharashtra, at the time of this election.

In the issue No. 7, dated 26th January 1959, filed by him, on page 3, the opinions of Janorkar and Amdar Shambharkar of the group of Haridas Awale, in the form of statements are reported, showing that they were against the formation of Samyukta Maharashtra. They were in favour of the formation of the four States of the Marathi speaking regions of the present Bombay State. They canvassed for the separate State of Vidarbha, being one of these four States. It is true that Mr Aney is against the formation of Samyukta Maharashtra and is in favour of a separate State for Vidarbha. He is personally in favour of Samyukta Maharashtra and he is against the formation of a separate State of Vidarbha, consequently He was against the ideologies of Mr Haridas Awale as well as Mr Aney. He thus admits that Mr. Aney and Mr. Awale were for the formation of a separate State of Vidarbha and Samyukta Maharashtra Samiti was for the formation of one State for Marathi speaking people. After certain references, made in this Paper, Dainik Vidarbha Andolan, were shown to him, he made a following statement:—

"From this para. idea is struck that the object of this paper was to support the formation of a separate State for Vidarbha and deprecate the formation of Samyukta Maharashtra."

He admits that, ordinarily, he used to read the issues of the Maratha paper of which he was the press manager. In para 65 of his deposition, he states that he is shown the Marathi paper issue, dated 10th January 1959, Ex. 53. It refers to the two candidates Rajabhai Khobaragade and Haridas Awale (आवले). He admits in para 68 of his deposition that, on page 4 of Maratha paper issue dated 13th January 1959, Ex. 55, Rajabhai Khobaragade's speech is reported. Haridas Awale (आवले) referred to therein is the candidate Haridas Awale. On page 1 of the issue dated 21st January 1959 of the Maratha paper, Ex 56, the headlines are about murderous assault by the goondas of Awale (आवले) party on Khobaragade Barrister. This Awale referred to therein is a candidate Haridas Awale. This is a report regarding the incident about which a report is made in the Dainik Vidarbha Andolan issue dated 22nd January 1959, on page 1. In both the reports Awale referred to, is the same Haridas Awale, the candidate.

In para 73 of his deposition, he states that in this very issue, on page 4 of the Maratha dated 24th January 1959 Ex. 57, under the caption "जानोकर शंभरकाराने खोडसाल पत्रक" (Janorkar Shambharkaranche Khodsal Patrak) report is made about the statements issued by those two persons. They are of Awale group. In the issue of Vidarbha Andolan dated 26th January 1959, on page 3 the said statements of the said persons Janorkar and Shambharkar are reported under the caption बौध्दानो खोबरागडेना मत देऊ नका (Boudhano Khobaragadena Mat Dewoo Naka). These two persons were making propaganda for the candidate Haridas Awale. The said Shambharkar is the Panjabrao Shambharkar. He is an M.L.A. He makes an admission that, in Schedule II, at serial No. 7, regarding the list of persons having committed corrupt practices, he has mentioned the name of this Panjabrao Shambharkar. It is in respect of this very article, "बौध्दानो खोबरागडेना मत देऊ नका" (Boudhano Khobaragadena Mat Dewoo Naka). He, thus, admits that, so far as serial no. 7 is concerned, the person who has committed corrupt practice, is Panjabrao Shambharkar, whose speech has been reported under the caption, "बौध्दानो खोबरागडेना मत देऊ नका" (Boudhano Khobaragadena Mat Dewoo Naka). He then admits that it is his say that, by this article, he made a propaganda on the ground of Buddha religion, to refrain from voting for Khobaragade. He then admits that the author of that article, that is the speech, was Mr. Shambharkar and, by that article, he made a propaganda on the ground of Buddha religion to refrain from voting for Khobaragade. Similar is the position for the item at serial No. 5 in question.

In para 74 of his deposition, he stated as under. By the word author, used in Schedule II, with reference to Panjabrao Shambharkar, he meant and means that he is the author (लेखक) of the article referred to therein i.e. he is the author of the statements referred to therein. He did not make an appeal on the ground of religion to vote for Mr. Awale. He made an appeal on that ground to refrain from voting for Khobaragade. For a similar article at serial No. 7, he states that the author referred to therein, made that statement and that statement made by that man was an appeal on the ground of religion to refrain from voting for Khobaragade. So far as the item in question is concerned he wants to suggest

that by the use of the word "author" he meant a person, who reported that speech.

This story of his, can hardly be gulped down. It is an ingenious attempt to disown his own statements made in the Schedule to meet with the difficulty, that has arisen, by not joining Mr. Haridas Awade, the candidate, as a party to the election petition.

14. In para 78 of his deposition, he states that in the issue dated 26th January 1959 of Maratha, Ex. 59 under the caption,

"हरिदास आवले हे कांसघरे छुपे हस्तक नि प्रचारक"

(Haridas Awale He Congress Che Chhupe Hastak ni Pracharak), the reference is made to the candidate Haridas Awale. It is a statement issue by R. D. Bhanfata Advocate and S. M. Meshram. This very Meshram is referred to as a leader of the group, in the report made in the Dainik Vidarbha Andolan issue, dated 22nd January 1959, on page 1, column 1. These three persons were mainly doing the election propaganda work for Khobaragade and against Haridas Awale. He ultimately admits that, in the year 1957, Mr. Haridas Awale and Shambharkar were the candidates of Samyukta Maharashtra Samiti, for the seats of the Parliament and the Bombay Legislative Assembly, respectively.

Awale was defeated and Shambharkar was elected. A reference about it is made in that statement. It is stated therein that Haridas Awale (आवले) and Shambharkar are making propaganda that Khobaragade is not an authorised candidate of the Republican Party, falsely and mischievously. It is true that in this election, Shambharkar and Awale were on one side. He cannot say that this was a rejoinder of the meeting report, published in the issue of Dainik Vidarbha Andolan, dated 26th January 1959, on page 1, under the caption

"खो खगडेला मत देऊन पक्षद्रोह व धर्मद्रोह करं नका"

(Khobaragadela Mat Dewoon Paksha Droha Va Dharm Droh Karu Naka). He thus admits that it is true that he could make out from this, that two groups, one of Awale and one of Khobaragade were making propaganda against each other. This report in Maratha paper was published with an object to gain votes for Khobaragade. It is not true that that report was made in Dainik Vidarbha Andolan to gain votes for Awale.

In para 80 of his deposition, he states that, on page 3 of the Maratha paper issue, Ex. 59 a facsimile of the ballot paper is published with a request that the voters should cross the tree symbol. The second person referred to, as Awade, referred to, in the ballot paper, is the candidate Haridas Awade. In the Note in Marathi, appended to it, there is a mention of "दसरे आवले" (Dusare Awale). It refers to this very Haridas Awade candidate. It is stated therein that the second candidate Haridas Awale had withdrawn. It is thus evidence that, in the petitioner's own paper Maratha, in the facsimile of the ballot paper in Marathi, this candidate Haridas Awade was referred to as Awale.

In para 81 he states that, in the issue of Maratha, dated 30th January 1959, Ex. 60, there is a headline stating that Awale has been expelled from the Republican Party. It refers to this very candidate Haridas Awale. In the report, in the columns 7 and 8, it is stated that in spite of the warning by the advocate Bhandare, the propaganda that votes should be given to the flaming torch of Awale is still being continued by the issue of pamphlets. It refers to this very candidate. It is reported therein also that to vote for this expelled Awale, will be a treachery to the Republican party and Baha Sabab, i.e. to late Dr. Ambedkar. It was the opinion of the representative of our (witness's) own Maratha paper. In both the issues of Maratha paper of the petitioner, Ex. 60 and 61, facsimiles of the ballot papers are printed. It is stated therein that second candidate Awale has withdrawn. It refers to this very candidate Haridas Awade.

In the issue of Maratha dated 1st February 1959 Ex. 62, Awale group referred to therein is the group of the candidate Haridas Awade. On page 3, there is a caption **"पक्षद्रोही आवलयांची रिपब्लिकन पक्षातून हकालपट्टी झाली"** (Paksha Drohi Awlvanchi Republican Pakshatun Hakal Patti Zali). It refers to the candidate Haridas Awade. On page 3 of it, there are two telegrams printed, one from Ratnam and another from Maurya in English and they are translated in Marathi. Awale referred to therein is the candidate Haridas Awade.

On the same page, facsimile of ballot paper is published and it is stated that the second candidate Awale has withdrawn. It refers to the candidate Haridas Awade. On the same page explanatory notes regarding the ballot paper are given. Therein, Awale is referred to as an independent candidate. He is the candidate Haridas Awade. On page 4, under the caption "पुढे बिल मागे मशाल" (Pudhe Bail Mage Mashal) refer to the election symbol of Mr Aney and Awale respectively. On page 4 of the Maratha issue, dated 5th February 1959, Ex 63, figures of votes secured by different candidates in this election are published. The candidate Haridas Awade has been referred to therein as Shilyut Awale. Same is the position regarding the wardwise figures published on the same page.

It is true that in this bye-election, the respondent secured 127 025 votes. Mr Khobaragade secured 68 957 votes. Mr Awale secured 11 448 votes.

In para 89 of his deposition he states that he is shown the issue of Dainik Vidarbha Andolan, dated 17th May 1959 in which the photo of Haridas Babu Awale is printed. It is the photo of the candidate Haridas Awade. He knows this Haridas Awade for the last 5 to 6 years. He then makes one another important admission which is to the following effect —

"I personally do not know any other man having the name Haridas Awale except the candidate Haridas Awade. It is, thus evident that according to his own personal knowledge there was no other man known to him having the name Haridas Awade or Awale except the candidate Haridas Awade."

In para 90 of his deposition, he states that he had read the Daily Maharashtra issue dated 28th January 1959 produced by him before its production. On page 4 of it there is a report of the speech made by Haridas Awale, who is the candidate Haridas Awade. He came forward with a story that it was not an appeal made by Haridas Awale the candidate, on the ground of Buddhist religion to the Buddhist voters for not voting for Mr Khobaragade. For similar article, the author of which was Mr Shambharkar, he said that it was an appeal made on the ground of Buddhist religion to Buddhist voters, for not voting for Mr Khobaragade.

In para 91 he admits that the Hindi paper, Nav Bharat was making propaganda for the congress in this bye-election and he has filed its issue dated 24th January 1959 only to show the phone number of Nag Vidarbha Andolan Samiti and also of Dainik Vidarbha Andolan and for no other purpose. On page 4 of it there is a report under the caption "श्री खोबरागडे बौद्ध धर्म के खिलाफ हड़ताल" (Shri Khobaragadeki Boudha Dharmke Khilap Harkate)." Statements of Janorkar and Shambharkar are reported therein. They are of the group of the candidate of Haridas Awade.

In para 131 of his deposition, he states that, in the Maharashtra paper Ex. 112, wardwise votes gained by Mr Aney and other candidates were published. Awale referred to therein, is the candidate Haridas Damaji Awade.

15. The petitioner's witness No 4 Parsuram Ramchandra Phansalkar, Ex 45, the Election Clerk in the Returning Officer's Office, Nagpur in his examination-in-chief has stated as under. He shows the original nomination papers of Shri Haridas Damaji Awade. He had filed five nomination papers. In all these nomination papers, he has mentioned himself, as Haridas Damaji Awade. He produces the nomination papers etc. In cross-examination in para 6 of his deposition he states that Haridas Damaji Awade has filed 5 nomination papers. In all these nomination papers, he has shown first preference for the symbol of elephant, which has been allotted to the Scheduled Caste Federation Party. His electoral number shown therein is 2203 in ward no 31 Block No 1. In the Marathi electoral roll produced by him, which is of the Ward No 31, at page 20, Block No 1, at the electoral roll no 2203, person shown is "हरीदास दामाजी आदले". This very person was a candidate under these five nomination papers. In English, his surname is spelt as Awade. The evidence of this witness further shows that even in the electoral roll prepared in Marathi, during the election in question this Haridas Awade was shown as "हरीदास दामाजी आदले". In English his surname is spelt as Awade.

16. At Ex. 127, Petitioner's witness No. 15 Bhaurao Devaji Khobaragade, the candidate of Samyukta Maharashtra Samiti in this election, has been examined. He states that, on 3rd October 1957 he was the President of the Scheduled Caste Federation. Mr. Haridas Damaji Awade was then the General Secretary. In Marathi, he writes also *Awade*, *आवले* and *आवडे कामले* and *कामडे* are not necessarily synonymous. He does not know, that they are some times synonymous.

This Khobaragade, for whom this petitioner was canvassing during this election, also states that this Haridas Awade writes himself in Marathi as *अवल* and *आवडे*. Mr. Panjabrao Shambharkar was the Secretary of the Nagpur Pradesh Republican Party on 3rd October 1957. Probably, Mr. Janorkar was the Secretary of the Nagpur Nagar Republican Party on 3rd October 1957.

In para 27, he states that it was the claim of the Awale group after 3rd October 1958 that this *Ad hoc* Committee had ceased to function. Mr. Janorkar and Mr. Shambharkar had joined Awade camp after 3rd October 1958. He had heard that, in this election, they were working for Mr. Haridas Awade. Mr. Janorkar and Mr. Shambharkar may have issued statements against him, that is the witness, in this election. He does not remember them. They may be opposing him, as they may be interested in getting Mr. Awade elected. Mr. Awade for some time, made a show in this election that he withdrew. Three or four days prior to election, he had not withdrawn and was contesting this election. After the visit of Mr. Justice U Chan H'toon, he was canvassing for voting for himself. During the entire election, Mr. Janorkar and Mr. Shambharkar were canvassing votes for Mr. Awade. He does not know that Dainik Vidarbha Andolan was supporting Mr. Awade. He thinks that it was supporting only Mr. Aney. Except his self interest, there was no difference of opinion between Mr. Awale and himself. Mr. Panjabrao Shambharkar is a member of the Bombay Legislative Assembly. Janorkar and Shambharkar might have claimed that there were differences of ideologies between Republican party and Samyukta Maharashtra Samiti. Possibly, they were making propaganda, during this election, as reported on page 3 of Dainik Vidarbha Andolan dated 26th January 1959, Ex. 89, shown to him.

In para 32 of his deposition, he states that possibly Mr. Awade, the candidate, may have made propaganda as reported in the Dainik Vidarbha Andolan dated 26th January 1959, on page 1 shown to him, at Ex. 89. He thus admits that possibly, the two important items referred to on pages 1 and 3 of Dainik Vidarbha Andolan dated 26th January 1959, Ex. 89, were the propaganda speeches made by Awade and Janorkar and Shambharkar.

17. Respondent's witness No. 2, Shri N. L. Belekar Advocate, Ex. 210, who was one of the candidates in this election, had withdrawn his candidature. In para 10 of his deposition, he states that, in this election, there were no candidates of Mahar community. Mr. Awade and Mr. Khobaragade both were Mahars formerly, but they had converted themselves into Neo-Buddhists prior to this election. In Marathi, he calls Haridas Damaji Awale (*आवले*). The evidence of this witness further shows that in Marathi, the candidate Haridas Awade (*आवडे*) is referred to as *Awale* (*आवले*).

Respondent's witness No. 4, Madhukar Deshpande Ex. 213 was working as Sub-Editor of this Vidarbha Andolan Paper, at the time of this election. That paper was started during this election, in January 1959. He used to attend the meetings at Nagpur proper and press conference and report about it. He was shown the report in Dainik Vidarbha Andolan dated 26th January, 1959 Ex. 89, under the caption "*खोबागडेला मत देऊन पक्षद्रोह व धर्म द्रोह करू नका*", the very item in question. He states that he had made that report. It was a report of the Republican Party meeting conveyed by Mr. Awale. He was present in that meeting. It was held in Jogi Nagar locality, Nagpur. This Awale was one of the candidates in this bye-election. He was shown the statement on page 3 of the same issue Ex. 89 under the caption, "*बौद्धासो खोबागडेला मत देऊ नका*". It is the item following next to the item in question. It is a statement issued by Mr. Shambharkar, who is M.L.A. of Awale group and, during this election, he was canvassing for Mr. Awale.

As referred to above, Mr. Khobaragade also admitted that this Shambharkar and Janorkar belonged to Awade group and they were canvassing for Mr. Awade. The witness further states that, he has given the gist of that statement, that is, he sub-edited it.

In para 7 of his deposition, he states that in both these items Awale, referred to is a same person, that is, the candidate referred to Awale. In his cross-examination in para 60 of his deposition, he has stated that Jogi Nagar locality, Nagpur, is near the Medical College side, about 6 furlongs away from the Medical College. Bahadure was the president in the meeting of the Joginagar locality reported by him and addressed by Mr. Haridas Awale, the candidate. He does not know the initials of Mr. Bahadure. Ramratan Janorkar was a speaker. There were other speakers whose names, he does not remember. That meeting was held for the election propaganda of Mr. Awale. Time announced for it was 8 P.M. but it was held at about 9-30 P.M. and continued upto 1 A.M. In para 62, he states that he used to go for taking reports of the meetings of Samyukta Maharashtra Samiti, Congress and Nagpur Vidarbha Andolan Samiti, if time permitted. If the report of anybody was made by somebody, who was not on their staff, they may have published it, if they felt that the report was true.

Nothing material is elicited in his cross-examination on this point, to doubt his testimony. He thus definitely states that Awale, referred to in this item, is Haridas Awale the candidate and none else and he had attended that meeting and made the report of the speech of Mr. Awale, the candidate. It is, thus, proved beyond any reasonable doubt that the report appearing in this paper Ex. 89 was made by this witness and the speech referred to, therein is the speech of Haridas Awale, the candidate, and Haridas Awade and Haridas Awale were one and the same. The consideration of the entire evidence referred to above, clearly indicates that this Haridas Awade, the candidate, was also referred to as Haridas Awale

(आवले) in Marathi language. Even in several issues of Maratha, the paper of which the petitioner Baburao was a press manager and the paper, which was making propaganda in support of the Samyukta Maharashtra Samiti candidate, Rajabhai Khobaragade and against Mr. Aney, the Congress candidate, and Haridas Awade an independent candidate, this Haridas Awade was referred to in Marathi as Haridas आवडे or आवले. Even in the notes to the facsimiles, of the ballot papers given by this very Maratha paper Ex. 59 & 60, this Haridas Awade, the candidate, was referred to as आवले. In other papers also, referred to above, he was referred to as Haridas आवले in Marathi. In the electoral roll prepared in Marathi, this Haridas Awade, the candidate, was referred to as हरीदास आवले. The respondent's contention that Haridas Awade, the candidate, was referred to in Marathi as Haridas Awade (आवडे) or Haridas Awale (आवले)

is, therefore, well-founded. It refers to none else, but the candidate Haridas Awade. The argument of the petitioner that Awade and Awale are two different surnames of different persons cannot, therefore, stand for a moment.

18. The next question for consideration is, whether the petitioner has referred to, in the Schedule II, a person other than the candidate Haridas Awade or Awale. It was sought to be suggested that the petitioner did not want to refer to this candidate Haridas Awade or Awale, as a person, who committed the corrupt practice. It referred the reporter of the meeting, who made a report about the meeting referred to, in this item, published in Dainik Vidarbha Andolan, dated 26th January, 1959, Ex. 89. This argument also, on scrutiny, cannot stand for a moment. Mr. Khobaragade has admitted in his deposition that, at the time of the visit of Mr. Justice U Chan H'toon at Nagpur, Awale group had assaulted him. The report of this incident has been made in Dainik Vidarbha Andolan dated 22nd January, 1959 at page 1, Ex. 85 under the caption, "बळोदरागडचे पवडजागी लता प्रहार? गारद्याच्या तावडीतून हरिदास बावले" (Barrister Khobaragadechya Avagadh Jagi Latta Prahar. Gardyachya Tavaditun Haridas Bachavale). In the body of the report of that incident, this Haridas has been referred to as, "आमदार हरिदास बाबू आवले". It is an undisputed fact that this Haridas Awade, the

candidate was then the member of the Bombay Legislative Council. In this report at several places, this Awade has been referred to as आवले (Awale).

The item in question has been published in Dainik Vidarbha Andolan issue dated 26th January, 1959, on page 1 of this Ex. 89. It is published under the caption, 'ख.ब.गडेली मत देऊन पक्ष द्रोह व धर्मद्रोह करू नका ! आवले यांची नव बौद्ध न चेतवण' (Khobarakadela Mat Dewoon Paksha Droha V Dharmdroha Karoo Naka? Awale Yanchi Nava-Boudhana Chetavani)". This Haridas is referred to therein as "हरिदास आवले". The heading itself shows that this Awade gave a warning to Nava Buddhas not to vote for Khobaragade and not to make treachery to the party and treachery to the religion or duty, by voting for Mr. Khobaragade. He reiterates the views of Babasaheb Ambedkar and shows, how the Neo Buddhas will make a treachery to the party or the religion or duty by voting for Khobaragade, the candidate for Samyukta Maharashtra Samiti. It is stated therein that, if one wants to follow Babasaheb Ambedkar, one should not vote for Khobaragade, who had gone in the Samyukta Maharashtra party and the Communist Party. It is stated therein that this speech is made by the elderly leader of Vidarbha Republican Party, namely Haridas Awade in a meeting of 10,000 people in Joginagar. It is further stated therein, that under the name of Babasaheb, the Samiti, that is Samyukta Maharashtra Samiti, has made a lot of confusion and they are going to bring a lot of confusion on that religion. If he does not correctly state the position, he will be deviating from the duty. Babasaheb always believed in democracy, and never believed in communism. Samyukta Maharashtra Samiti is a hotchpot of several objects. Babasaheb believed in separate States of Marathi speaking regions. He has further stated that votes should not be given to Khobaragade. It may bring about the result that Congress may become victorious; but there is no remedy for it. In the mind of the voters, the question may be, whether to vote for the Congress or the Samiti, but do not commit a treachery to the party or to the religion or duty by voting for Mr. Khobaragade. If you want to see that Babasaheb's principles survive, the clear duty is not to vote for Khobaragade.

19. It is, therefore, evident that the objection taken by the petitioner regarding this item, is in respect of the objectionable speech made by Mr. Awade, the candidate and none else. The contention on behalf of the petitioner, that the petitioner wanted to refer to one Haridas Awale, who according to the information received by him, had reported about this incident, is falsified by the statement Ex. 13, made on behalf of the petitioner. At the time, the petitioner sought to amend his election petition by adding the names of persons, who had, according to him, committed the corrupt practices, he had given a list Ex. 13. It was the respondent's contention, at the time of opposing the amendment application, that these names were an afterthought. Most of the names were there in the documents already filed with the petition. The articles reported in those newspapers, against which objection was taken by him, were referred to, in the relevant Schedules. The pages of those issues were given. The captions were given. In many of them, these names of those authors, the name of the Publisher, Printer and Editor of those newspapers find place. It was only by an oversight that, in the relevant Schedules, these names were not specifically given.

In this document Ex. 13, given on behalf of the petitioner by his advocate, it stated that for the Schedule I Item No. 1, all the names, which he wants now to add, are mentioned in Dainik Vidarbha Andolan issues dated 21st and 22nd January, 1959, filed by him. For the item No. 3, Schedule I, the name of Baburao Harkare is mentioned in Dainik Vidarbha Andolan issue dated 26th January, 1959. For the item No. 5 of Schedule I, names of Gopikabai Kannamwar and Maganlal Bagadi are mentioned in Dainik Vidarbha Andolan issue dated 28th January, 1959. For Schedule II, name No. 1, that is of Mr. T. G. Deshmukh appears in all the issues of Dainik Vidarbha Andolan. Names of Nos. 2 and 3 appear in the issue dated 24th January, 1959 and all subsequent issues. Names Nos. 4 and 5 appear in the issue of Daily Maharashtra dated 28th January, 1959. Names Nos. 6 to 26 appear in the issues of Dainik Vidarbha Andolan mentioned in Schedule II of the petition against item numbers (serial numbers) given against these names in Schedule II of the application for amendment.

20. If we now refer to this Schedule II along with this document Ex. 13, we find that in the Schedule II, at serial No. 5, the Dainik Vidarbha Andolan issue referred to is issue No. 7 dated 26th January, 1959. The pages referred to therein

are the pages Nos. 1 and 3, of this Dainik Vidarbha Andolan issue Ex. 89. The captions of articles and items referred to therein are two. On page 1, the article or item referred to is the item in question. The caption is, "Khubaragade Na Mat Dewoon Paksha Droh Wa Dharma Droha Karoon Naka". On page 3 of it, the article or item published, referred to is, "Boudhanno Khobaragadena Mate Dewoo Naka". This issue of Dainik Vidarbha Andolan has been filed from the very beginning along with the election petition, sent by the petitioner to the Election Commission. This statement in Ex. 13 made on behalf of the petitioner shows that, so far as these items are concerned, the names of the persons, who committed these corrupt practices, are mentioned therein. They are not being subsequently added. In the Note given in the amended Schedule II, which was done after the amendment sought for, was allowed, it is stated that 'the following persons were parties to the corrupt practice alleged in this Schedule'. It is, therefore, evident that the allegation made was that the persons referred to, therein had committed the corrupt practices alleged in that Schedule. At serial No. 1 in that Note, the name of T. G. Deshmukh as Editor, Printer and Publisher of Dainik Vidarbha Andolan is shown as such a person; for the items 1 to 10 above. Admittedly, this Deshmukh was the Editor, Printer and Publisher of all these Dainik Vidarbha Andolan issues. At serial Nos. 2 and 3, Ramlal Iraway and Wasantrao Masodkar are shown as authorised agents of Dainik Vidarbha Andolan, for items Nos. 1 to 10 above. At Serial No. 4, P. D. Dhawale was referred to as such a person, being an Editor, Printer and Publisher for Daily Maharashtra, for Item No. 11. At Serial No. 5, Anant Ramchandra Kulkarni was referred to as such a person being the author of the article "Nagpurchi Yeti Pot Nivadanuk Va Buddhanche Kartawya" in item No. 11 above. It, thus, shows that for the items 1 to 10, the Editor, Printer and Publisher of Dainik Vidarbha Andolan, in which those items were published, and its authorised agents were shown as persons, having committed the alleged corrupt practices. For the item 11, published in Daily Maharashtra dated 28th January, 1959, its Editor, Printer and Publisher Mr. Dhawale and the author of the article objected to and published therein, were referred to as persons having committed the said corrupt practice.

Thereafter, the following statement is made:—

"The following persons as authors of items stated against their names."

It is an admitted position that all those persons, whose names have been given at serial numbers 6 to 26 were shown to have committed corrupt practices as authors of items stated against their names. At the serial No. 6, Haridas Awale has been shown to be an author for the item No. 5, published on page 1 of this Dainik Vidarbha Andolan, dated 26th January, 1959 Ex. 89. It is, therefore, evident that this Haridas Awale has been shown to have committed corrupt practice by being an author of this item No. 5, published on page 1 of this Dainik Vidarbha Andolan Ex. 89. At serial No. 7, Panjabrao Shambharkar has been shown to have committed corrupt practice for the item No. 5, published on page 3 of the same issue. It is, therefore, evident that these two persons have been shown to have committed corrupt practice for the two items published in this Dainik Vidarbha Andolan issue dated 26th January, 1959, Ex. 89, on pages 1 and 3, respectively. Those articles referred to run under the captions, (1) ख बरागडेल मत देऊन धर्मद्रोह व धर्मद्रोह करू नका (Khubaragadela Mat Dewoon Pakshdroha V Dharmdroh

Karoo Naka) and (2) बौद्धानो ख बरागडेला मत देऊ नका (Boudhanno Khebaragadena Mat Dewoo Naka).

21. In this document Ex. 13, filed on behalf of the petitioner, to show that most of these names already appear and no attempt was made to invent the names and give them, it is stated that Names Nos. 6 to 26 appear in the issues of Dainik Vidarbha Andolan, mentioned in Schedule II of the petition against the item numbers (Sl. Nos.) given against these names in Schedule II, in the application for amendment. It is, thus, evident that the petitioner's own say is that these names Nos. 6 and 7 appeared in the issue of Dainik Vidarbha Andolan mentioned in Schedule II of the petition against the items Nos. (Sr. Nos.) given against these items, in Schedule II of the application for amendment. It is the petitioner's own case in this document that these names find place in the several articles referred to by him, published in the issues filed by him.

If we now read this article or item in question published on page 1 of the Dainik Vidarbha Andolan Ex. 89, the name we find is only of हरिदास आवले the candidate. The speech objected to is the speech of हरिदास आवले. In that

document, we do not find that the reporter of that speech in the meeting was Haridas Awade. There is no name of any reporter mentioned therein. The only conclusion that could, therefore, be drawn is that the name that appeared was that of Haridas Awade, the candidate, who had made that speech, and that speech came to be objected to, and it was alleged that, that speech was a systematic appeal to Boudha voters, not to vote for Khobaragade, on the ground of religion, race, community etc. This document Ex. 13 clearly indicates that this petitioner has subsequently made an ingenious attempt to overcome the difficulty by suggesting that he wanted to refer to the reporter, who made the report of this meeting and not the candidate, Haridas Awade. In the ordinary course of events, if it was a true fact, it would have been stated that the person referred to, is the reporter, just as the Editors and other people have been referred to. It could not have been stated in this document Ex. 13, that the name of the person, who committed this corrupt practice, appears in that very article published in that paper.

22. There is one another intrinsic test, which belies this story propagated at later stage to overcome the difficulty. In this very issue on page 3, another article, to which objection was taken, has been published under the caption,

बौध्दाने खोबारगडेना मत देऊ नका ! श्रमदार शंभू कर यांची स्पष्ट नि !

(Boudhanna Khobaragadenna Mat Dewoo Naka. Amdar Shambharkar Yanchi Spashtokti). It is admitted that this Shambharkar was, during this election, working for the candidate Haridas Awade and this Shambharkar was also a member of the Legislative Assembly. The Editor has made a note on the top that he is giving the summary of a pamphlet addressed to Boudha people by Janorkar and Amdar Shambharkar, the two brilliant leaders of the group of Amdar Haridas Babu Awade of Republican Party. It is stated in this article, in the heading that Khobaragade is not a candidate of the Republican Party. It is further stated therein that Khobaragade knows that he is not going to get votes of the Republican Party, he being not an authorised candidate of the Republican Party. There are differences of ideologies between the Republican Party and Samyukta Maharashtra Samiti. The Republican Party had demanded the formation of four States of Maharashtra, while the Samyukta Maharashtra Samiti wants a Samyukta Maharashtra, inclusive of Bombay, and they want one Marathi speaking State. Both the schemes are mutually conflicting with each other. In view of it, people of Republican Party are not going to vote for Khobaragade. Haridas Awade, Amdar Shambharkar, Janorkar and others met the Hon'ble Justice D. Chan E'toon and inquiry was made regarding the incident, that had taken place at the time of his visit. The background was explained to him. Several issues were discussed for about 1½ hours. He hinted the Buddhists to be aware of communists etc. Mr. Khobaragade should take a lesson. Samyukta Maharashtra will not come into existence.

Mr. Khobaragade has admitted in his evidence that Mr. Shambharkar, who was canvassing for Mr. Awade, possibly may have made such a propaganda. For this item, the petitioner has definitely stated in his evidence, as referred to by me above, that this article related to the corrupt practice committed by Mr. Shambharkar. He also stated that corrupt practice was committed by this Shambharkar, by appealing to Buddhists not to vote for Mr. Khobaragade on the ground of religion. In the Schedule II, at serial No. 7 for this article, the person referred to, as having committed corrupt practice, is Panjabrao Shambharkar. The name of Shambharkar appears in this article also, as in the previous article in question. It is, therefore evident that the person referred to as having committed corrupt practice, by the petitioner in the Schedule II, is none else but the candidate Haridas Awade. It does not refer to any person other than the candidate Haridas Awade. It does not refer to another person, who is alleged to be a reporter of the speech made in the meetings.

23. The petitioner has admitted in his evidence, as referred to above, that by the use of the word "author" by him, so far as that article was concerned, was Panjabrao Shambharkar; he wants to draw a distinction for the very use of the word "author" for the item in dispute. He wants to convey that the word "author" was used in this context for the word "reporter". It will be pertinent to note that the petitioner, in his statement Ex. 29, has stated that the allegation of corrupt practice made by him in the petition amended on 28th August, 1959 is made against one Haridas Awade, the author of the item entitled "Khobaragade Na Mat Dewoon Paksha Droha Wa Dharma Droha Karoon Naka" and published in the Dainik Vidarbha Andolan, dated 26th January, 1959 and not Haridas Damaji Awade, one of the contesting candidates in the election, who is a different person. Possibly, it was contemplated then, that distinction could be made between the word *Awala* and *Awade*, as in the petition the contesting candidate was referred

to, as Haridas Awade and in the Schedule II, the words Haridas Awale was used. As several documents, which I have already referred to, clearly indicate that the surname **आवले** In Marathi, is spelt in English as Awade also, he came forward with a story that he referred to the reporter of this item, who was, according to the information received by him, after a few days after publication of this item, to be one Haridas Awale. He has admitted that he knew no other man named Haridas Awale. He did not know that any such person ever existed or exists. In the verification made by him, he has stated that the information given by him regarding the names of the persons, who have committed corrupt practices, is true to his personal knowledge. It is, therefore, evident that this is an after-thought, and he has made an ingenious attempt to overcome the difficulty, that came in his way, by the non-joinder of the candidate as a party, to this election petition. His conduct, after the respondent gave an application to dismiss the petition under section 90(3) of the Act, is eloquent enough to point to the same conclusion.

In the first amendment application, under which these names were sought to be added by giving better fuller particulars, he had stated that, through oversight, he had forgotten to give the particulars regarding the names in, the relevant Schedules. He also stated that most of the names already appeared in the documents filed by him along with the election petition. This name did find place in the Dainik Vidarbha Andolan issue dated 26th January 1959 Ex. 89. I accepted the amendment, as that story of his, appeared to be a true story. In the second amendment application given on the date of the hearing of this application Ex. 23, he tried to take a somersault. He wanted to delete all the names who had, according to him, committed the corrupt practices, except Mr. T. G. Deshmukh, the Editor, Printer and Publisher of the said Dainik Vidarbha Andolan paper. It was clearly with a view to delete the name of this contesting candidate. In the order passed by me rejecting this second amendment application, I have made it quite clear that it was possibly given with a view to overcome this difficulty. It appears to me to be a clever device to get out of this difficulty created. I find that these allegations of corrupt practice made, are against Haridas Awade or Haridas Awale, the contesting candidate and none else.

24. The next question for consideration is whether the allegation made in the petition are the allegations of corrupt practice or not.

In section 123 of the Act, the corrupt practices have been defined. The relevant sub-section for our purposes is sub-section (3) of section 123 of the Act. It runs as under:—

“The systematic appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent, to vote or refrain from voting on grounds of caste, race, community or religion or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of that candidate's election.”

It is, therefore, evident, that if such a systematic appeal is made by any other person, it would amount to corrupt practice, if it is done with the consent of a candidate or his election agent. In the present case, the candidate is the respondent. The respondent had no election agent. We will have, therefore, to examine whether the petitioner has pleaded in his petition, that Haridas Awale, the contesting candidate had made this systematic appeal, with the consent of the respondent, to vote or refrain from voting on the ground of caste, race, community or religion.

25. The relevant para of the election petition is para No. 6, for this purpose. The relevant portion in that para runs as under:—

“In the course of the propaganda carried on by the respondent for his election, systematic appeals were made by the respondent and with the consent of the respondent by his agents and other persons who were canvassing votes for him, to vote for the respondent and to refrain from voting for Shri Rajabhau Khobaragade on grounds of caste, race, community and religion. These appeals, uses and appeals were made at various meetings held at Nagpur and other places, particulars of which are given in Schedule I, by articles and items published in the newspapers (filed

herewith) viz., Dainik Vidarbha Andolan and Daily Maharashtra, published at Nagpur, particulars of which are given in **Schedule II** and by pamphlets and handbills published at Nagpur, the particulars of which are given in **Schedule III.**"

It is, therefore, evident that there were the allegations of corrupt practices made, in this petition. If these allegations are accepted as true, it will amount to corrupt practice, as contemplated in section 123(3) of the Act. Even in the statements filed by the petitioner, he has admitted that there are allegations of corrupt practice made, but his say was that it was not the allegation of corrupt practice committed by Haridas Awade, the candidate. This latter part of his story has been rejected by me, it being untrue. I, therefore, find that the petitioner has made the allegations of corrupt practice within the meaning of the corrupt practice defined in this sub-section (3) of section 123 of the Act, against the contesting candidate Haridas Awade or Awle. We have, therefore, to examine the further question, what is the effect of it on this petition, as admittedly this contesting candidate Haridas Awade is not joined as a party to this election petition.

26. There is no dispute that this Haridas Awade (**आदल**) is a contesting candidate, even at the poll. Part VI of the Act relates to disputes regarding elections. Chapter II of Part VI of the Act deals with a question regarding the presentation of election petitions to the Election Commission. Section 80, which falls in that Chapter II of Part VI, states that, no election shall be called in question except by an election petition, presented in accordance with the provisions of this Part. It is, therefore, evident that an election can be called in question only, if an election petition is presented in accordance with the provisions of this Part.

Section 82, which falls in Chapter II of Part VI, relates to parties to the election petition. It states that a petitioner *shall join* as respondents to his petition—

- (a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidate is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and
- (b) any other candidate against who mallegations of corrupt practice are made in the petition.

In the present case, the petitioner has merely claimed a declaration that the election of the returned candidate, viz., the respondent is void. He has not claimed a further declaration that any other candidate has been duly elected. It is, therefore, evident that, in view of the provisions of clause (a) of section 82 of the Act, the returned candidate was only a necessary party. The returned candidate is made a party to the election petition. The clause (b) of this section 82 further states that in case, allegations of any corrupt practice are made in the petition against any other candidate, he is also to be joined as a respondent to the petition. In the present case, the allegations of corrupt practice are made in the petition against another candidate Haridas Awade, who was a contesting candidate at the poll. It is, therefore, evident that, in view of the provisions of clause (b) of section 82 of the Act, the petitioner had to join him as a respondent. Admittedly, he has not been joined as a respondent to the petition.

27. Chapter III of this Part VI of the Act, relates to the trial of election petitions. Before I refer to the relevant sections of that Chapter III, it will be proper to refer to section 85, which falls in Chapter II of Part VI of the Act. It states that, if the provisions of section 81 or section 82 or section 117 have not been complied with, the Election Commission shall dismiss the petition. The proviso added is that the petition shall not be dismissed without giving the petitioner an opportunity of being heard. It is, therefore, evident that the Election Commission is also enjoined to dismiss the petition, if the provisions of section 82 have not been complied with.

Section 86, which falls in Chapter III of Part VI, relates to the appointment of Election Tribunal. Sub-section (1) of it states that if the petition is not dismissed under section 85, the Election Commission shall cause a copy thereof to be published in the official Gazette and a copy to be served by post on each

respondent, and shall then refer the petition to in Election Tribunal for trial. On the strength of these provisions, I have been appointed as a Member of the Election Tribunal and the petition in question has been referred to me, for trial.

28. Section 90, which falls in this Chapter III, of Part VI of the Act, relates to the procedure before the Tribunal. Sub-section (1) of it states that, subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure (5 of 1908), to the trial of suits. A proviso has been added to it, which is not material for our purposes. Sub-section (3) of it states that the Tribunal shall dismiss an election petition, which does not comply with the provisions of section 81, section 82 or section 117 notwithstanding that it has not been dismissed by the Election Commission under section 85. This sub-section clearly indicates that the Tribunal is enjoined to dismiss an election petition, which does not comply with the provisions of section 82, notwithstanding, that it has not been dismissed by the Election Commission, under section 85. It is, therefore, evident that this is a mandatory provision. The Tribunal has no option but has to dismiss an election petition, which does not comply with the provisions of section 82 of the Act. The Representation of the People Act, which is amended from time to time and which is applicable to the petition in question, clearly enjoins upon the Tribunal to dismiss the election petition which does not comply with the provisions of section 82.

An Explanation to this sub-section, which has been added by the Amending Act No. 58 of 1958 and which also governs the present case, that amendment having come into force prior to the filing of the election petition, runs as under:—

“An order of the Tribunal dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

This Explanation added by this Amending Act makes it quite clear that an order of the Tribunal dismissing an election petition under this sub-section (3) of section 90 of the Act, is to be deemed to be an order made under clause (a) of section 98.

It is now a settled position of law that these provisions are mandatory provisions and the Tribunal is enjoined to dismiss an election petition under section 90(3) of the Act, if the provisions of section 82 are not complied with. It is also a settled position of law that such a defect cannot be permitted to be cured, either by allowing the amendment of the petition, by dropping these allegations of corrupt practice made against a candidate, who is a necessary party to the petition, as per the provisions of section 82 of the Act. It is also a settled position of law that the petitioner, to cure this defect, cannot be permitted to add such a person, as a respondent.

29. In a decision of the Supreme Court, reported in AIR 1958 S.C. 698 (*Inamati Mallappa Basappa v. Desai Basavaraj Ayyappa and others*), the following observations have been made:—

“An election contest is not an action at law “or a suit in equity but is a purely statutory proceeding unknown to the common law and the Court possesses no common law power. An election petition is not a matter in which the only persons interested are candidates who strove against each other at the elections. The public also are substantially interested in it and this is not merely in the sense that an election has news value. An election is an essential part of the democratic process. An election petition is not a suit between two persons, but is a proceeding in which the constituency itself is the principal party interested.

It is this interest of the constituency as a whole which invests the proceedings before the Election Tribunals with a characteristic of their own and differentiates them from ordinary civil proceedings. Once this process has been set in motion by the petitioner, he has released certain forces which even he himself would not be able to recall and he would be bound to pursue the petition to its logical end.

The Representation of the People Act is a self contained code governing the trial of election petitions and in spite of the provisions of S. 90(1) of the Act, the provisions of O'23 R. 1 do not apply to the election

petitions and it would not be open to a petitioner to withdraw or abandon a part of his claim, once an election petition was presented to the Election Commission, more so when such a withdrawal or abandonment of a part of the claim would have the effect of depriving the returned candidate or any other party to the petition of the right of recrimination, which had accrued to him under S. 97 of the Act.

There is no power in the Election Commission to allow a petitioner to withdraw or abandon a part of his claim either by having resort to the provisions of 0:23 R. 1, Civil P.C., or otherwise....."

In another decision of the Supreme Court, reported in AIR 1958 S.C. 687 (*K. Kamaraja Nadar, v. Kanju Thevar and others*), it has been observed as under:—

"Contesting candidates within the phraseology, which has been used in S. 38 are candidates who are included in the list of validity nominated candidates and who have not withdrawn their candidatures within the period prescribed for such withdrawal. These are the contesting candidates within the meaning of that term as used in the Act and they are normally excepted to go the poll".

We are not much concerned with that proposition in the present case, as Mr. Haridas Awale was a candidate even at the time of the poll, within the meaning of the word "candidate" given in section 79, which falls in Chapter I of Part VI, of the Act. Section 79(b), which is relevant for our purpose, runs as under:—

"In this Part and in Parts VII and VIII, unless the contest otherwise requires,—

- (b) "candidate" means a person who has been or claims to have been duly nominated as a candidate at any election, and any such person shall be deemed to have been a candidate as from the time, when with the election in prospect, he began to hold himself out as a prospective candidate."

This Supreme Court decision was relating to a case where the provisions of clause (a) of section 82 of the Act were attracted. The relevant observations made therein can be referred to, with some advantage, for seeing the effect of the non-compliance of the provisions of section 82 of the Act.

"An election petition calling in question any election can be presented by any candidate at such election or any elector on one or more of the grounds specified in Ss. 100(1) and 101 to the Election Commission and a petitioner in addition to calling in question the election of the returned candidate or candidates may further claim a declaration that he himself or any other candidate has been duly elected. Where the petitioner claims such further declaration, he must join as respondents to his petition all the contesting candidates other than the petitioner and also any other candidate against whom allegations of any corrupt practices are made in the petition. The words 'other than the petitioner' are meant to exclude the petitioner, when he happens to be one of the contesting candidates, who has been defeated at the polls and would not apply, where the petition is filed for instance by an elector. An elector filing such a petition would have to join all the contesting candidates whose names are included in the list of contesting candidates prepared and published by the returning officer in the manner prescribed under S. 38, that is to say, candidates who were included in the list of validly nominated candidates and who had not withdrawn their candidature within the period prescribed. Such contesting candidates will have to be joined as respondents to such petition irrespective of the fact that one or more of them had retired from the contest under S. 55-A(2). If the provisions of S. 82 which prescribes who shall be joined as respondents to the petition are not complied with, the Election Commission is enjoined under S. 85 of the Act to dismiss the petition. Section 90(3) similarly enjoins the Election Tribunal to dismiss an election petition which does not comply with the provisions of S. 82 or S. 117 notwithstanding that it has not been dismissed by the Election Commission under section 85. Section 90(3) is mandatory, and the

Election Tribunal is bound to dismiss, such a petition if an application is made before it for the purpose."

In the present case, such a petition has been made before this Tribunal for the said purpose.

It has been further observed therein that the defect of non-joinder of necessary parties to the election petition cannot be cured by amendment inasmuch as the Election Tribunal has no power to grant such an amendment, be it by way of withdrawal or abandonment of a part of the claim or otherwise, once an Election Petition has been presented to the Election Commission, claiming such further declaration.

In para 33 of the Judgment at page 697, the following observations have been made:—

"As regards the amendment of a petition by deleting the averments and the prayer regarding the declaration that either the petitioner or any other candidate has been duly elected, so as to cure the defect of non-joinder of the necessary parties as respondents, we may only refer to our Judgment about to be delivered in *Mallappa Basappa v. Bsavaraj Ayyappa*, Civil Appeal No. 76 of 1958 (AIR 1958 S.C. 698) (D) where the question is discussed at considerable length. Suffice it to say here that the Election Tribunal has no power to grant such an amendment, be it by way of withdrawal or abandonment of a part of the claim or otherwise, once an Election Petition has been presented to the Election Commission claiming such further declaration."

These two decisions support the conclusions of mine, referred to above. In view of these two authorities and the scheme of the Act referred to above, it is evident that no amendment to cure this defect could be allowed. Such allegations made also cannot be allowed to be withdrawn. The consequence of non-joinder of such a person is that the petition is liable to be dismissed under section 90(3) of the Act.

30. The learned advocate Shri Jaywant for the petitioner contended that the scheme of the Act indicated that, if such allegations were made in the petition itself, the petition was liable to be dismissed under section 90(3) of the Act. He urged that it could not be said, in the present case, that these allegations of the corrupt practice were made against the candidate Haridas Awade in the election petition. They were made in the amendment petition Ex. 4. The amendment petition was given before the Tribunal. In the petition referred to, by the Election Commission to the Election Tribunal for the trial of this petition, the allegations were not made. The petition could not, therefore, be dismissed on account of the non-joinder of the candidate Haridas Awade, as a respondent.

If we examine this question critically, this argument does not appear to be well-founded. In para. 6 of the election petition, it is stated that in the course of the propaganda carried out by the respondent for his election, systematic appeals were made by the respondent and, with the consent of the respondent, by his agents and other persons, who were canvassing votes for him, to vote for the respondent and to refrain from voting for Shri Rajabhai Khobaragade, on the grounds of caste, race, community and religion. In the next portion of it, there is reference regarding the use of a religious symbol and a national symbol made for the furtherance of the prospects of the respondent's election. It is further stated therein that these appeals, uses and appeals were made at various meetings held at Nagpur and other places, particulars of which are given in Schedule I by articles and items published in the newspaper (filed herewith), viz. *Dainik Vidarbha Andolan* and *Daily Maharashtra*, published at Nagpur, particulars of which are given in Schedule II.....

It is thus evident from the election petition as it stood unamended, that the allegations of corrupt practice are made and it is stated that the particulars of this corrupt practice are given in Schedule I. It is further stated that the corrupt practices were committed and, for it, reference is made to articles and items published in the newspapers filed along with the election petition itself. Those newspapers were *Dainik Vidarbha Andolan* and *Daily Maharashtra* published at Nagpur, particulars of which are given in Schedule II.

Dainik Vidarbha Andolan issue dated 26th January 1959 Ex. 89 was filed along with this very election petition from the very beginning. In Schedule II, in which

the particulars have been given, in the head-lines, it is stated that Schedule II is showing the articles or items in Dainik Vidarbha Andolan and Dainik Maharashtra mentioned in para 6 of the petition. At serial No. 5, the date of issue of this Dainik Vidarbha Andolan, its volume number, page number and caption of the article and item in question are given. This was given even in the un-amended Schedule II. In the amended petition, and in the course of the arguments, whether the amendment petition should be allowed or not, it was stated that most of these names do appear in the several issues of Dainik Vidarbha Andolan filed along with the election petition. By oversight, the particulars regarding the names of the persons, who were allowed to have committed corrupt practices, were not specifically given in Schedule II. So far as this particular item No. 5 published on page 1 of Dainik Vidarbha Andolan, dated 26th January 1959 Ex. 89, is concerned, the name appears in that very document filed along with the election petition from the very beginning. In the document Ex. 13 filed on behalf of the very petitioner, the list of the persons, who are alleged to have committed corrupt practices and whose names appear in the several documents filed by the petitioner from the very beginning, is given. In that list, the name of this candidate Haridas Awale is given. It is, therefore, evident that even according to the petitioner, this name was appearing from the very beginning. It could not, therefore, be said that these allegations, against the candidate Haridas Awade, were first time, introduced by the amendment made in the election petition. It was only after the respondent filed an application Ex. 23 to dismiss the election petition under section 90(3) of the Act, the attempt was made to show that there names were sought to be added by an amendment petition, through oversight. I rejected that second amendment application on the ground that this story has been developed only with a view to overcome the difficulty raised. I, therefore, hold that these allegations of corrupt practices against the candidate Haridas Awade are made in the election petition itself. If it had been a case of introducing new instances of corrupt practice by way of an amendment to the election petition, this argument could have been advanced. In that event, it would have been necessary to consider, what would be the effect, if such allegations are introduced, only by amendment of an election petition. I, therefore, reject this contention advanced on behalf of the petitioner.

31. Before I go to certain other questions raised by the petitioner, I will first decide another point for determination framed by me, as those other questions are raised also, for the allegations of corrupt practice against Mr. N. L. Belekar, in Ex. 331. The respondent has contended that one other candidate Shri N. L. Belekar Advocate, against whom the petitioner has made allegations of corrupt practice in the petition Schedule I, and who has since been examined as R.W. 3, has also not been joined as respondent, as he must have been joined. The petition is, therefore, liable to be dismissed under section 90(3) of the Representation of the People Act. In the reply Ex. 333 filed by the petitioner, he has admitted that Shri N. L. Belekar had not been joined as respondent, to this petition. It is, however, denied that Shri Belekar is a candidate. Shri Belekar withdrew his candidature under section 37 of the Representation of the People Act, 1951 and thereby, he has ceased to be a candidate. The petitioner has not also made any allegation, that Shri Belekar committed the corrupt practice as a candidate. The allegations against Shri Belekar are also not made in his capacity as a candidate. It is, therefore, not necessary for the petitioner to join him as a respondent.

This Belekar has been examined on behalf of the respondent as R.W. 3. It is an admitted position that this Belekar had filed his nomination paper for this bye-election in question. His nomination paper was found on scrutiny, to be a valid nomination. His name was shown in the list of the validly nominated candidates prepared by the Returning Officer. It is also an admitted fact that he withdrew his candidature within the prescribed period for withdrawing the candidature. It is, therefore, to be seen whether such a person, who has withdrawn his candidature within the prescribed period, can be said to be a candidate contemplated in clause (b) of section 82 of the Act.

32. Before I discuss that legal question, it will be necessary to see, whether the allegations of the corrupt practice are made against Shri Belekar in the election petition or not. The relevant para of the election petition is, para No. 6, which I have referred to, *in extenso*, time and again. The relevant schedule for this purpose is Schedule No. I. It is alleged in the election petition that the corrupt practices referred to in section 123(3) of the Act were made in the several meetings, in the course of the propaganda carried on, by the respondent, for his election. The first meeting referred to in the Schedule I is dated 19th January 1959 and the place of meeting referred to is Umrer. Names of the persons,

who made the appeals or uses referred to in section 123(3) Representation of the People Act, are given. Against this item No. 1, names given were:—

- (i) Baburao Harkare, (ii) T. G. Deshmukh, (iii) Premnath Wasnik, and (iv) N. L. Belekar.

It is thus evident that the name of Shri Belekar is given therein as a person, who committed corrupt practice.

In the item No. 3 of Schedule I, the date of the meeting referred to is 23rd January 1959. The place of meeting referred to is Golibar Chow-Rasta, Nagpur. Against that item, three names have been given as persons, who committed the corrupt practice. They are, (i) Baburao Harkare, (ii) N. L. Belekar, (iii) Narayanrao Chhapparghare. It is thus evident that one of the persons, who are alleged to have committed corrupt practice referred to therein is this N. L. Belekar.

In the document Ex. 13 filed on behalf of the petitioner, giving the list of persons alleged to have committed the corrupt practice, whose names appear in the issues of Dainik Vidarbha Andolan already filed, it is stated that for the item No. 1 of the Schedule I, names of all the persons, who committed corrupt practices, already appear in the Dainik Vidarbha Andolan issues dated 21st and 22nd January 1959, filed along with the election petition. These issues are Exs. 85 and 86. In those issues, the report of the speeches of several speakers made in the meeting of Umrer, is made. The speech of Mr. N. L. Belekar also finds place in them. It is thus evident that, even according to the petitioner, this name found place in the document filed by him along with the election petition. It is, therefore, evident that the allegations of corrupt practice against Mr. N. L. Belekar found place in the original unamended election petition also. It is not a case of introducing a new instance of corrupt practice by way of an amendment to the election petition. Only, by an amendment, these particulars of the names were specifically brought in the schedule. It is, therefore, evident that the allegations of corrupt practice have been made against Mr. N. L. Belekar also, from the very beginning. The allegations made in the election petition amount in law to 'corrupt practices' defined in section 123(3) of the Act, as it was the case of the corrupt practice alleged against Haridas Awade.

33. I will now discuss the question urged by the learned advocate Shri Jaywant for the petitioner, that Shri N. L. Belekar cannot be said to be a candidate contemplated in section 82(b) of the Act. In support of his arguments, he relied upon a decision reported in AIR 1959 Patna 250 (*Kapildeo v. Suraj Narayan*). That decision no doubt supports his argument. The observations made therein are as under:—

"On a proper construction of Section 82, a candidate who had been duly nominated as a candidate at an election but has withdrawn his candidature under Section 37 of the Act is not a candidate within the meaning of Section 82(b) of the Act to be required to be made a party to the election petition."

Their Lordships of the Patna High Court distinguished the Supreme Court decision reported in AIR 1958 S.C. 687, which I have already referred to above. The relevant question is discussed in para 5 of the Judgment and the subsequent paras. The observations made therein are as under:—

"The third contention raised on behalf of the petitioner is that the above named two persons, namely, Sri Rameshwar Yadav and Sri Sukar Yadav, were necessary parties to the election petition and they not having been made parties to it, it should have been dismissed in limine. His submission is that these persons were necessary parties to the petition under Section 82(b) of the Act and under the provisions of Section 90(3) of the Act, the Tribunal was bound to dismiss the election petition which did not comply with the provisions of Section 82 of the Act.

"It is no doubt true that if these persons are necessary parties to the petition, there is non-compliance with the provisions of Section 82 of the Act and under Section 90(3), the Election Tribunal should have dismissed the petition. But, in my opinion, there is no justification for holding the above two persons to be necessary parties to the petition.

In order to appreciate the above point, it may perhaps be necessary to refer to a few sections of the Act. Section 33 makes provision for

presentation of nomination paper and requirements for a valid nomination. Section 36 provides for scrutiny of nominations. Sub-section (8) of that section says that immediately after all the nominated papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board.

Section 37 authorizes any candidate to withdraw his candidature by a notice in writing. Then comes section 38 which provides for publication of list of contesting candidates, that is to say, candidates who were included in the list of validly nominated candidates but have not withdrawn their candidature. Thereafter, there are various sections, which deal with matters relating to the procedure of making the election and then Section 56 provides for fixing time for poll.

Thereafter, again, there are various other sections which deal with manner, procedure and method of voting, counting of votes and report of the result. Then comes Part VI in the Act which contains provisions for disputes regarding elections. Section 79(b) defines "candidate" to mean, unless the context otherwise requires, a person who has been or claims to have been duly nominated as a candidate at any election.

Section 82 of the Act runs as follows:—

"A petitioner shall join as respondents to his petition—

- (a) Where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and
- (b) any other candidate against whom allegations of any corrupt practice are made in the Petition."

"It is on this section that Counsel for the petitioner has advanced an argument that Sri Rameshwar Yadav and Sri Sukar Yadav were necessary parties to the election petition. His contention is that according to the definition given in Section 79, any person who has been duly nominated as a candidate at an election is a candidate for the purpose of Section 82 and the above two persons admittedly having been duly nominated, are candidates so as to be made parties to the election petition under clause (b) of that section.

The argument put forward is that apart from the persons, who are required to be made parties under clause (a) of that section in petitions claiming different kinds of relief, any other candidate against whose allegations of corrupt practice have been made in the petitions must be made parties in all such election petitions; in other words, Counsel has submitted that the above two persons Sri Rameshwar Yadav and Sri Sukar Yadav having been duly nominated as candidates at the election and allegations of corrupt practices having been made against them, under clause (b) of Section 82 as being 'any other candidates against whom allegations of any corrupt practice are made in the petition'.

The definition of candidate given in Section 79 is not absolute because it is always subject to the context which may require it to mean otherwise. Counsel for respondent No. 1 has argued that under Section 37, the above two persons withdrew their candidature and, therefore, they thereafter could no longer be said to have been candidates for purposes of any act required to be done by the Act thereafter. His submission is that the definition of candidate as given in Section 79 should be read along with the provisions of Section 37 and they, being read together, clearly indicate that a candidate who withdrew his candidature could not be said to be a candidate for being made a party in the election petition. The above argument appears to be well founded and must prevail.

The correctness of the above submission appears from the use of the words "any other candidate has been duly elected" in clause (a) of Section 82. That clause lays down as to who should be made parties, when the petitioner claims a declaration that he himself or any other candidate has been duly elected. The word "candidate" here could not be used to include a candidate who has withdrawn his candidature, because the question of his having been duly elected could never arise after the withdrawal of his candidature under section 37 of the Act.

The meaning of the word "candidate" here has to be given according to the definition given in Section 79(b), with reference to the context. Similarly, the words "any other candidate" used in clause (b) must, with reference "to the context of that clause itself, mean any candidate who did not withdraw his candidature under Section 37 of the Act, because the question of corrupt practice practically arises only on publication of a list of contesting candidates under Section 38 of the Act after the withdrawal of the candidature by any candidate under Section 37 of the Act. On a proper construction of Section 82, my opinion is that a candidate who had been duly nominated as a candidate at an election but has withdrawn his candidature under Section 37 of the Act is not a candidate within the meaning of Section 82(b), of the Act to be required to be made a party to the election petition."

In my opinion, with due deference to their Lordships of the Patna High Court, the reasoning adopted is fallacious. Their Lordships have tried to import something in clause (b) by referring to clause (a) of section 82. I will discuss this question at length after referring to another decision, which supports my conclusion and which has been relied upon by the learned Advocate Shri Bobade for the respondent.

In para 10 of this judgment of the Patna High Court, the following observations have been made:—

"Counsel for the petitioner, however, has relied on a Supreme Court decision in *K. Kamaraja Nadar v. Kunju Thevar*, AIR 1958 SC 687. In that case, it was held that any person who has given a notice of retirement under Section 55A(2) of the Act continues to be a contesting candidate for the purposes of the Act and he is a necessary party to an election petition under Section 82 of the Act. That case, in my opinion, has no application to the facts of the present case. Section 55A(2) provides for the retirement of the contesting candidate from the contest.

There is a marked difference between this section and Section 37 under which a candidate withdraws from the candidature itself and not only retires from the contest. After having withdrawn from the candidature under Section 37, there is no scope for any contention that he is still a candidate for any purpose of the Act, whereas in the case of Section 55A(2), he does not cease to be a candidate but only retires from the contest."

34. In a decision reported in AIR 1958 Allahabad 809, (*Chaturbhuj Chunnail v. Election Tribunal Kanpur and others*), this question has been discussed at a very great length. The scheme of the Act has been referred to therein. The point in issue is viewed from all points and a decision contrary to the decision referred to above, is taken therein.

In the two petitions in the Allahabad decision referred to above, in each of the two constituencies, there was one other candidate, who had withdrawn his candidature under section 37 of the Act by a notice in writing to the Returning Officer. In the election petitions, there were allegations of corrupt practices having been committed by the individuals, who had withdrawn their candidature, but they were not impleaded as respondents in the election petitions. The election petitions were referred by the Election Commission to the Election Tribunal for trial under section 86 of the Act without dismissing them under section 85 of the Act. In both the petitions, at certain stages, objections were taken before the Election Tribunals, that the election petitions should be dismissed under section 90(3) of the Act on the ground that a candidate against whom allegations of corrupt practice had been made in the petitions had not been impleaded as a party to the election petitions so that there was non-compliance with the provisions of Section 82(b) of the Act. These objections were allowed and the petitions were dismissed. In the election petition out of which Miscellaneous Writ Petition No. 3140 of 1957

arises, an application was also made for amendment of the particulars by striking off the name of Dilip Singh, the person against whom allegations of corrupt practice had been made and who had not been impleaded as a party, though he was a candidate, who had withdrawn his candidature under Section 37 of the Act. That application was dismissed before the dismissal of the petition. Their Lordships referred to section 82 and thereafter made the following observations:—

"It is to be noticed that the expression used in clause (b) of section 82 of the Act is 'any other candidate' without any qualifying words except the expression 'against whom allegations of any corrupt practice are made in the petition'. In both the cases, allegations of corrupt practice were made against the candidates who had withdrawn their candidature so that the qualification laid down in section 82(b) of the Act did exist.

The words "any other candidate" without any other qualifying words are on the face of it wide enough to cover every person who has been a candidate at any time. The plain language of this section consequently, if read without reference to other provisions of the Act, leads to the inference that any person who has been a candidate and against whom there are allegations of corrupt practice in the election petition, must be impleaded as a party to that petition.

The main controversy has, however, arisen because of the interpretation put upon the word "candidate" in this provision of law. It was urged on behalf of the petitioners in the present petitions that the word "candidate" should be given a limited meaning and should be held to refer only to that person, who remains a candidate even up to the time of the actual poll, in a case where the election is decided by the poll.

The word "candidate" has no doubt been used in common parlance in various meanings so much so that, even after an election is concluded, a person who had been a candidate at the election is often referred to as a candidate. On behalf of the petitioners, reference was also made to the interpretation of the word "candidate" placed in *Morris v. Sir Francis Burdett*, (1813), 105 ER 361(A), where the defendant Sir Francis Burdett had been returned to Parliament without having made his appearance on the hustings or interfering in any way himself or by his agents in the election or having held himself out or authorised any one else to hold him out as a candidate.

So far as the interpretation of section 82(b) of the Act is concerned, however, the meaning attached to the word "candidate" in common parlance and the meaning assigned to it in the case cited above are irrelevant as the word "candidate" is defined in section 79(b) of the Act itself. The definition given in section 79(b) of the Act governs the interpretation of the word "candidate" as used in Parts VI, VII and VIII of the Act and section 82(b) is in Part VI. Consequently the word "candidate" in section 82(b) should be interpreted with reference to this definition which is as follows:

" "candidate" means a person who has been or claims to have been duly nominated as a candidate at any election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate".

The decision of the present writ petitions therefore turns on the question, whether a candidate who has withdrawn his candidature under section 37 of the Act is included within the word "candidate" as defined in section 79(b) of the Act reproduced above. The arguments in these petitions have in these circumstances centred on the interpretation of this definition of the word "candidate".

It has also to be kept in view that even in Parts VI, VII and VIII, this definition of the word "candidate" applies unless the context otherwise requires, so that another aspect, that has to be seen, is whether the context, in which the word "candidate" has been used in section 82(b) of the Act, requires any interpretation different from the meaning given to the word "candidate" in the definition.

Before we deal with the interpretation of the definition of "candidate" in section 79(b) of the Act, we may also take notice of the provisions of clause (a) of section 82 of the Act reference to which is necessary for interpreting clause (b) of that section. The use of the word "other" in clause (b) indicates that the persons who are necessary parties under this clause are those who are not already parties to the election petition under earlier clause (a).

In clause (a) election petitions have been divided into two classes. One class of petitions is that in which the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected. The second class of election petitions is that in which no such further declaration is claimed so that the only declaration claimed is that the election of all or any of the returned candidates is void.

In cases of the first class, under clause (a) all the contesting candidates other than the petitioner have to be joined as respondents to the election petition whereas in cases of the second class, all the returned candidates have to be joined as respondents to the election petition. The expression "any other candidate" in clause (b) of section 82 would in these circumstances cover, in the case of election petitions of the first class, candidates other than the contesting candidates who in addition are candidates against whom allegations of corrupt practice are made in the petition.

In the second class of cases, the expression "any other candidate" would cover candidates besides the returned candidates, provided that allegations of any corrupt practice are made against them in the petition. Reference to clause (a) thus shows that the expression "any other candidate" would cover in the first class of election petitions, all candidates besides the contesting candidates and in second class of cases, all others besides the returned candidates.

Reference to clause (a) does not thus narrow down the scope of the words "any other candidate" so as to exclude candidates who may have withdrawn their candidature or who may otherwise have gone out of the contest. Reading section 82 by itself, therefore, the expression "any other candidate" would appear to include all kinds of candidates, except contesting candidates in the first class of cases and except returned candidates in the second class of cases, if allegations of any corrupt practice are made against them, in the election petition.

This reasoning of the Allahabad High Court is sound, in my opinion. The reasoning adopted by the Patna High Court, by referring to clause (a) is, in my opinion, fallacious.

It is further observed in this Allahabad decision that,

"The definition of the word "candidate" in section 79 of the Act also appears to us to be wide enough to cover all persons who enter the election contest by seeking nomination and who are either validly nominated or, if their nominations are rejected, claim to have been duly nominated. A limitation on this meaning was sought to be placed on behalf of the petitioners because of the expression "at any election" used in this definition.

It was urged that the use of this expression "at any election" would indicate that a person would be a candidate for the purposes of Parts VI, VII and VII only, if he remained a candidate right up to the time of poll. In support of this argument, reliance was placed by learned counsel for the petitioners on a decision of the Bombay High Court in *Sitaram Hirachand v. Yograjsingh*, AIR 1953 Bom. 293(B), and on a decision of this Court in *Sheo Kumar v. V. G. Oak*, AIR 1953 All 633(C).

Those were both cases in which the question of interpretation of the expression "candidates who were duly nominated at the election", as used in section 82 of the Representation of the People Act, 1951 before its amendment by the amending Act, 1956, came up for interpretation. This section 82, as used in the unamended Act can no longer be

applied to the provisions of the present Act. Under the unamended Act, section 82 was as follows:

"A petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated".

Firstly, the language used in section 82 at that time would indicate that the intention of joining candidates as respondents was merely to give them an opportunity to contest the election petition and it was in the light of this purpose that the Courts interpreted the expression "the candidates who were duly nominated at the election".

The Courts accepted the contention that candidates, who had withdrawn from the contest by withdrawing their candidature, could not be more interested in contesting an election petition than any other voter, so that it was not necessary to place a wide interpretation on the expression used in section 82 at that time. The present language of section 82 shows that persons who are to be impleaded as parties under clause (b) of that section *are not required to be impleaded as respondents with the sole purpose of contesting the prayer in the election of declaration of the election of all or any of the returned candidates as void.*

For that purpose, the persons who are to be impleaded as respondents are given in clause (a) of section 82 of the Act, in which the election petitions have also been divided into two different classes as mentioned above. In one case, the persons who are considered necessary respondents for the purpose of contesting the prayer in the election petitions, are all the contesting candidates other than the petitioner and in the other class of election petitions, they are the returned candidates.

Persons who are impleaded under clause (b) of section 82 of the Act are only to be impleaded in case there are allegations of any corrupt practice against them, in the petition. They are therefore not to be impleaded because they are necessary parties in an election petition in which a declaration that the election of all or any of the returned candidates is void is being claimed. They are to be impleaded as parties because there are allegations of corrupt practice against them, in the election petition.

Clearly, therefore, clause (b) of section 82 of the Act introduces the requirement of certain persons being impleaded as respondents in the petition with a purpose, which is entirely different and distinct from the purpose for which persons are to be impleaded as respondents under clause (a) of section 82 of the Act or the purpose for which persons were to be impleaded as respondents in an election petition under section 82 of the unamended Act.

Consequently, any interpretation which was placed on the provisions of section 82 of the unamended Act cannot serve any useful purpose when interpreting clause (b) of section 82 of the Act.

Reliance was, however, placed on certain observations of this Court in the case of AIR 1953 All 633(C), cited above where reference was made to the definition of the word "candidate" as given in section 79(b) of the unamended Act which was identical in language with that in the present section 79(b) of the Act. In the definition also, the expression "at any election" has been used. After quoting the definition given in section 79(b) of the unamended Act, this Court proceeded to hold:

"Clearly a wide definition had to be given to the word "candidate" as the object appears to have been to prevent corrupt or improper practices. The words "at any election" in section 79 would in cases in which an actual election takes place, have reference to the exact time, when the polling takes place. It is vital to note that the definitions given in section 79 are subject to the context otherwise requiring".

The Court also proceeded to consider the scope of the expression "duly nominated candidates" as used in section 79(b) of the unamended Act after referring to various provisions of that Act and held:

"It is clear from the scheme outlined above that it is only from among the list of duly nominated candidates, who have not withdrawn their candidature and taken back their deposit that the list of valid

nominations can be drawn up. It will also be seen that for the purpose of the election, the candidate who allows himself to be nominated with due formalities, who survives the scrutiny of his nomination paper but withdraws his nomination before or on the date fixed for the withdrawal or the deposit ceases to be any kind of candidate at the election."

It appears to us that, when interpreting the expression "duly nominated as a candidate at any election" as used in the definition given in section 79(b) of the unamended Act, the Court had kept in view the other provisions of the then Act and consequently, we consider that whatever comments were made for the purpose of arriving at the interpretation, must be read as having been made in the light of all those provisions of that Act.

After amendments by the amending Act of 1956, a number of other provisions of the Act have been changed and consequently comments made on the basis of those provisions, which have since been altered, cannot be held to be applicable to the amended Act for the purpose of interpreting its provisions. In the unamended Act, there was no provision at all for drawing up a list of validly nominated candidates from amongst those candidates whose nomination papers were not rejected and were held to be valid.

Under that Act, after the nominations were filed before the Returning Officer, the Returning Officer had to entertain objections against the nominations and decide them and then record on the nomination papers themselves whether those nominations were accepted or rejected. Thereafter, the candidates had to exercise their right of withdrawing their candidature if they desired to do so.

It was after the withdrawals had been made and a notice of the withdrawals had been affixed that the Returning Officer for the first time prepared and published a list of valid nominations. The effect of course was that anyone whose name appeared could not subsequently withdraw and there was further no provision permitting retirement from the contest subsequent to that stage, so that every one whose name appeared in the list of valid nominations, remained a candidate even at the time of the poll.

Under the present Act, the scheme is different. Under section 36 of the Act, the nominations are to be scrutinized and objections decided whereafter the Returning Officer had to proceed to prepare a list of validly nominated candidates, who are candidates whose nominations have been found valid, and this list is affixed to the notice-board.

It is subsequent to the affixation of this list of validly nominated candidates that those, whose names appear in the list, can exercise their option of withdrawing their candidature, and, when the candidature has been withdrawn, the Returning Officer has to prepare and publish a fresh list which is described as a list of contesting candidates and in which are to be shown the names of candidates who were included in the list of validly nominated candidates and who had not withdrawn their candidature within the prescribed period.

The expression "contesting candidates" has been introduced, for the first time by the amending Act of 1956. Further, under section 55A of the Act introduced by the amending Act of 1956, provision has been made for a contesting candidate retiring from the contest by a notice in the prescribed form delivered to the Returning Officer.

There was no such provision for retirement in the unamended Act so that under that Act, any candidate whose name appeared in the list of valid nominations had to continue as a candidate up to the time of the actual poll; whereas under the present Act, even after a candidate's name has been published in the list of validly nominated candidates, he can cease to be a candidate at the poll either by withdrawing his candidature or by giving a notice of retirement from the contest.

When these marked changes have been introduced in the Act, it seems to us that the interpretation which was put even on the definition of the word "candidate" in section 79(b) as it occurred in the unamended

Act cannot be applied to the definition of the word "candidate" in the present Act, even though the language in the definition has remained unaltered.

It is to be noticed that, in the definition of the word "candidate" in section 79(b) of the Act two sets of persons have been included. One set of persons consists of everyone who has been duly nominated as a candidate at any election and the other set includes *every person who claims to have been duly nominated as a candidate at any election*.

In the case of persons who have been duly nominated as candidates at any election, there can be a question of withdrawal and retirement and the further question whether they had or had not remained candidates at the actual poll for the purpose of contesting the election. In the case of the other set of persons, who only claim to have been duly nominated as candidates at any election, there will be no such question.

No occasion can arise for their withdrawing their candidature or retiring from the contest because they cease to be in the contest, when their names are not shown in the list of validly nominated candidates. They cannot, further, under any circumstance be candidates at the time of the actual poll. The expression "at any election" in the definition qualifies persons, who fall, under either of the two sets.

The position explained above makes it clear that at least persons covered by the definition of the word "candidate" and falling within one set of such persons can never be candidates at the poll even though an actual poll may be held for the purpose of deciding the contest. It is only persons in the other set, viz. those who have been duly nominated as candidates at the election, who can continue to be and appear as candidates at the actual poll.

Since the expression "at any election" governs both classes of cases, the expression cannot in these circumstances be held to refer to the actual poll even in cases where an actual poll is held. If such an interpretation were to be accepted, it would mean that this expression "at any election" would have one meaning with respect to one set of persons and an entirely different meaning with respect to the other set of persons.

"The contention that this expression "at any election" with reference to persons who have been duly nominated as candidates, would signify candidates who continue as such up to the actual poll, would be inconsistent with the interpretation of this very expression with reference to the other set of persons who claim to have been duly nominated as candidates at the poll.

In the present Act, therefore, the expression "at any election" used in the definition of the word "candidate" in section 79(b) cannot be interpreted in the manner in which it was open to interpretation under the unamended Act and consequently the interpretation which was placed by this Court in the case cited above cannot be applied to the present Act."

In my opinion, this is one of the strongest grounds, which shows the fallacy of the reasoning adopted in the Patna decision.

35. It is further observed in this Allahabad decision, as under:—

"Learned counsel for the petitioners also drew our attention to the definition of "electoral right" given in clause (d) of section 79 of the Act and sought to infer from it that the definition of the word "candidate" in clause (b) had been narrowed down so as to exclude persons, who had withdrawn from being candidates. The definition in clause (d) of section 79 is as follows:

"electoral right" means the right of a person to stand or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election."

The argument of learned counsel for the petitioners was that, under this definition, a person was given an electoral right to withdraw from being a candidate and if the meaning assigned to the word "candidate"

in clause (b) is applied to the word "candidate" as used in this clause (d), the necessary inference must be that a person who withdraws from being a candidate, cannot be held to be a candidate within the definition in clause (b) and must be excluded from it.

His argument, if accepted, would mean that the definition of the word "candidate" in clause (b) should be narrowed down by taking into account the consequence of the definition of "electoral right" in clause (d). We do not consider that it would be the correct way of proceeding to interpret clauses (b) and (d). The word "candidate" though defined in clause (b) applies to the other clauses as well as to the other provisions of Part VI and to Parts VII and VIII only, if the context does not otherwise require.

"It seems to us that the word "candidate" as used in clause (d) in the definition of "electoral right" must as a result of the context, be interpreted to have been used in a sense different from that given to it in the definition in clause (b). The proper course would be not to interpret the definition of "candidate" with reference to the definition of "electoral right" but to interpret the word "candidate" used in the definition of "electoral right" as connoting a meaning different from that given in the definition because of the context.

When putting forward this argument, learned counsel attempted to substitute a part of the definition for the word "candidate" in the definition of "electoral right" and to read it as follows:

"“Electoral right” means the right of a person to stand or not to stand as, or to withdraw from being, ‘a person who has been duly nominated as a candidate at any election’ or to vote or refrain from voting at an election.”

On this substitution it was urged that an "electoral right" included the right to withdraw from being a person who has been duly nominated as a candidate at any election and this right having been exercised by withdrawal of candidature under section 37 of the Act, that person would cease to be a person who has been duly nominated as a candidate "at any election".

The fallacy in this argument becomes apparent if, instead of substituting merely one part of the definition, an attempt is made to substitute both parts of the definition of the word "candidate" in the definition of "electoral right". The second part of the definition of "candidate" refers to a person who claims to have been duly nominated as a candidate at any election and if this part of the definition is substituted in the definition of "electoral right" the definition of that expression would be as follows:

"“electoral right” means the right of a person to stand or not to stand as, or to withdraw from being, ‘a person who claims to have been duly nominated as a candidate at any election’, or to vote or refrain from voting at any election.”

On the face of it, this definition becomes meaningless. A person who merely claims to have been duly nominated as a candidate at any election can have no occasion to withdraw his candidature and no question can arise of his withdrawing from being a candidate. In the circumstances, the proper method of interpretation is that the word "candidate" as used in the definition of "electoral right" must be read in a more limited sense and not as equivalent to the word "candidate" as defined in clause (b) of section 79 of the Act.

"A reference to the definition of "electoral right" in clause (d) of section 79 of the Act does not therefore lend any assistance to the interpretation of the definition of the word "candidate" given in clause (b) of section 79 of the Act. So far as the definition is concerned, the word "candidate" includes "every person who has been duly nominated as a candidate at any election" and this expression is wide enough to include any candidate who may have withdrawn his candidature under section 37 of the Act or who may have retired from the contest under section 55A of the Act, even though the result of the election may be decided by an actual poll.

Learned counsel for the petitioners also urged that the use of the present participle "has been duly nominated" in the definition of the word "candidate" should lead to the interpretation that it covers only those persons who continue to be candidates right up to the time, when the election is actually decided by declaration of the result; and, in case, any person ceases to be a candidate at that time by withdrawal or retirement, it should be held that he is not a person who has been duly nominated as a candidate at the election.

The effect of using the present participle "has been" was considered by a Bench of this Court in Mubarak Mazdoor v. K. K. Banerji, 1958 All L.J. 5: (AIR 1958 All 323) (D), where it was held, when interpreting the second proviso to sub-section (3) of section 80 of the Act, as being equivalent to "is" or "at one time was". That case is, however, sought to be distinguished by learned counsel on the ground that, in that case, the expression "has been" was interpreted where it was followed by a noun and was not followed by a participle.

The expression that was interpreted in that case was "a person who has been a Judge of a High Court". The expression that has to be interpreted in the present case is "a person who has been duly nominated as a candidate". No doubt this distinction drawn by learned counsel has to be considered; but it appears to us that in spite of this distinction there is no reason to hold that by the definition of the word "candidate" only those persons are meant who continued to be candidates up to the time of the poll. As urged by the learned Advocate General on behalf of the respondent in one of these writ petitions, it seems that, when the word "candidate" was defined in section 79(b) of the Act, there was no question of taking into account any time element for determining as to who was candidate for purposes of Parts VI, VII and VIII. Parts VI, VII and VIII deal with election petitions, corrupt practices and disqualifications.

All the situations envisaged in these three Parts arise after the election is over, the result has been declared and an election petition is to be or has been filed. Since there are no further steps to be taken in the election itself at this stage, no one would at this time be a candidate who has been duly nominated, at the election.

Everyone would be a person who at some earlier period of time had been duly nominated as a candidate at the election. The definition of the word "candidate" given in section 79(b) of the Act is thus for the purpose of being applied at a time, when no one continues to be a person duly nominated as a candidate at an election, so that the expression "has been duly nominated as a candidate at an election" can refer and must refer to a person who had been duly nominated as a candidate earlier before the result of the election was declared.

Under these circumstances, there is no reason at all to make any distinction between persons, who were duly nominated candidates at some earlier stage of the election but not at some later stage. It seems to us that the expression "a person who has been duly nominated as a candidate at any election" is meant to connote persons whose names appear in the list of validity nominated candidates under section 36(8) of the Act.

They may withdraw their candidature under section 37 so as not to be contesting candidates or they may retire from the contest under section 55A of the Act and cease to be candidates at the poll. They must all be described as persons "who have been duly nominated candidates at the election", when this description has to be applied, after the result of the election has been declared.

The language used in the definition and the purpose for which the definition has been given thus lead to the inference that the word "candidate" was intended to cover every person who has at any time, been duly nominated as candidate at any election."

In the decision of the Patna High Court, relied upon by the learned advocate for the petitioner, the proper attention that the word "candidate" which is defined in section 79(b) of the Act includes also persons, who claim to have been duly nominated, has not been given. In this Allahabad decision, the entire scheme

of the Act has been referred to. The provisions which stood before the amendment of 1956, have been considered, and the relevant provisions, as they stood, after this amendment, have been taken into consideration.

36. It has been further observed in this Allahabad decision that there is then the question, how far the view they have expressed above, is borne out by the purpose, which is sought to be served by this provision contained in clause (b) of section 82 of the Act. The observations are as under:—

“We have already indicated earlier our inference that a person, who is impleaded under clause (b) of section 82 of the Act, is not made a party to an election petition, for the purpose of enabling him to contest the main relief claimed in the election petition, viz., a declaration of a returned candidate as void, and in some cases, the further declaration that the petitioner or any other candidate has been duly elected.

It cannot be accepted that a candidate against whom there are allegations of corrupt practice in the election petition, is in any way more necessary party than a candidate against whom, there are no such allegations of corrupt practice for the purpose of contesting or of having an opportunity of being heard in respect of the relief or reliefs mentioned above.

The persons who were considered necessary parties to an election petition for the purpose of being heard in respect of the main relief or reliefs have to be impleaded as parties under clause (a) of section 82 of the Act. In a case, where the declaration is confined to the invalidity of the election of a returned candidate, the Legislature laid down that all the returned candidates should be impleaded as parties, whereas in a case, where a further declaration is sought that the petitioner himself or any other candidate has been duly elected, the necessary parties are all the contesting candidates.

The purpose of impleading persons as parties under clause (b) of section 82 of the Act has to be inferred from the qualifying expression “against whom allegations of corrupt practice are made in the petition”. It seems that the object of the impleading those candidates against whom allegations of corrupt practice, are made in the petition can be two-fold. One object can be that the Legislature considered it desirable that such candidate should have a right of hearing and of participating in the proceedings before the election tribunal at all the stages. The other object can be that the Legislature attached special importance to the conduct of candidates as compared with mere voters and consequently made a special provision for their being impleaded as parties to the petition at the initial stage.”

In my opinion, this second object referred to in this Allahabad decision must be the object for impleading such persons, against whom allegations of corrupt practice have been made, as respondents to the election petition.

37. It is further observed therein (in the Allahabad decision) as follows:—

“An election tribunal after trying an election petition has, of course to decide the question whether the election of all or any of the returned candidates should or should not be declared to be void and the further question whether the petitioner or any other contesting candidate should be declared duly elected. But, in addition, the tribunal has to discharge another function of recording a finding whether any corrupt practice has or had not been proved to have been committed and to name the persons who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice.

Importance is attached to this finding of the tribunal by imposing penalties against persons so named by the tribunal under sections 140 and 141 of the Act. Section 99 of the Act, however, contains a provision that a person who is not a party to the petition, shall not be named by the tribunal in its order unless he has been given notice to appear before the tribunal and to show cause, why he should not be so named and if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the tribunal and has given evidence against him, of calling evidence in his defence and of being heard.

This provision is applicable to every person whether he be a candidate or merely a voter. In spite of this provision contained in section 99 of the Act, the Legislature proceeded to make the further provision in section 82(b) of the Act laying down that any candidate against whom allegations of corrupt practice are made in the petition, must necessarily be impleaded as a party to the petition.

It seems to us that this special provision in section 82(b) of the Act in spite of the existence of the provisions of section 99 mentioned above, has been made because the Legislature attached special importance to commission of corrupt practice by candidates as distinguished from voters. In the case of a candidate against whom, there are allegations of corrupt practice in the petition, the Legislature did not leave it to the option of the Tribunal to give him a notice under section 99 of the Act but laid down a mandatory provision requiring that such a person must be impleaded as a party to the petition by the petitioner himself so that from the very initial stage, the attention of the tribunal will be focussed on those allegations of corrupt practice, and, in the course of the trial of the petition, an enquiry into those allegations would be made by the tribunal in the presence of the person against whom, the allegations have been made.

In the case of voters, who were not candidates, there is a possibility that the tribunal may omit to give the required notice under section 99 of the Act particularly in those cases where the corrupt practice may be of a minor nature. In the case of a candidate, however, the tribunal is bound to enquire into the allegations of corrupt practice made against him, when he is a party to the petition itself and the tribunal can name him under section 99 of the Act without being required to give a notice and without having to duplicate the proceedings by giving him an opportunity of cross-examining the witnesses at that late stage, of calling evidence in his defence and of being heard.

The imposition of the penalty of disqualification from voting or from membership of Parliament or of the Legislature of a State has greater importance in the case of a person who puts forward his candidature as compared with one who merely exercises his right of vote but does not intend to seek election to the Parliament or the State Legislature.

For such a purpose, it seems to us that there can be no distinction between a candidate who had withdrawn after being duly nominated and a candidate who either subsequently retired or continued to be a candidate at the poll. All of them, by seeking nomination, expressed their intention of becoming members of the Parliament or the State Legislature; and, if there is to be a disqualification for such membership because of proof of commission of corrupt practice by them, the liability of the disqualification is of as great importance in the case of candidates who had withdrawn as in the case of other candidates who either later retired or continued as candidates at the poll.

As has already been stated, the provision in Clause (b) of section 82 of the Act, for impleading certain persons as parties, is in addition to the provision contained in clause (a) of section 82 of the Act, under which in the two classes of petitions contesting candidates or returned candidates have in any case to be impleaded as parties. In cases, where all contesting candidates are already parties to the petition under clause (a) of section 82 of the Act, clause (b) of section 82 of the Act can only cover those candidates, who were not contesting candidates, so that under clause (b) of section 82 of the Act, no occasion can ever arise of impleading those candidates, who continued at the poll.

So far as those contesting candidates who continued as such at the poll are concerned, they would already be parties under clause (a) of section 82 of the Act and no occasion could arise of impleading them under clause (b) of section 82 of the Act. In such cases, persons to be impleaded under clause (b) of section 82 of the Act would be only those who are not covered by the expression "contesting candidates" used in clause (a) of section 82 of the Act.

It is not necessary at this stage to go into the question as to whether candidates who retired from the contest under section 55A of the Act, are or are not included within the expression "contesting candidates" used in clause (a) of section 82 of the Act. Even if it be held, as has been contended before us, that the expression "contesting candidates" used in clause (a) of section 82 of the Act does not include retired candidates, it seems to us that under clause (b) of section 82 of the Act, it would be necessary to implead as parties candidates, who may have withdrawn their candidature under section 37 of the Act or candidates who may have retired from the contest under section 55-A of the Act, in cases where allegations of corrupt practice are made in the petitions against those candidates.

Candidates, who withdraw their candidature and candidates, who retire from the contest, are all persons who initially expressed their desire of being elected as members of the Parliament of the State Legislature but later on, decided not to seek election for such membership. The importance that is to be attached to allegations of corrupt practice would be the same, whether the candidate expresses his intention of not contesting the election at an earlier stage by withdrawing his candidature under section 37 of the Act or at a later stage, by retirement under section 55-A of the Act.

If we were to hold that the expression "any other candidate" in clause (b) of section 82 of the Act does not include candidates who withdraw their candidature, it would mean that the Legislature made a distinction between candidates who retire from the contest even for the purpose of enquiring into allegations of corrupt practice made in the petition.

Such a distinction would amount to unreasonable discrimination and we do not think that it would be correct to accept an interpretation which would lead to an inference that the Legislature had made unjustified discrimination without any reasonable classification having a nexus with the purpose to be achieved by the particular provision of law.

The principles of interpretation require that that interpretation should be accepted, which does not make a law void or unreasonable, provided that the interpretation is permissible by the language used and is in line with the purpose for which the provision of law has been enacted. In the present case, the interpretation that the expression "any other candidate" in clause (b) of section 82 of the Act includes all candidates covered by the definition given in section 79(b) of the Act irrespective of their having withdrawn their candidature subsequently under section 37 of the Act avoids bringing in any such discrimination.

Even for the purpose of granting the privilege of a hearing from the initial stage of a petition, there should be no discrimination between candidates who withdraw their candidature and other candidates who do not do so. Consequently, even if the purpose of this provision of law is taken into account, the interpretation accepted by us that the expression "any other candidate" in clause (b) of section 82 of the Act includes candidates, who withdraw their candidature, is correct."

The reasoning adopted in this decision, in my opinion, is very sound and unassailable. After the decision of the Supreme Court reported in AIR 1958 S.C. 687, (K. Kamraja Nadar v. Kunju Thevar) the reasoning adopted in this Allahabad decision, gains further strength.

38. In this Supreme Court decision (AIR 1958 S.C. 687), the Supreme Court has laid down that "the contesting candidates within the phraseology, which has been used in section 38 are candidates, who were included in the list of validly nominated candidates and who have not withdrawn their candidature within the period prescribed, for such withdrawal." These are the contesting candidates within the meaning of that term as used in the Act and they are normally expected to go to the poll.

Section 55-A(5) provides that any person who has given a notice of retirement under section 56-A(2) is deemed not to be a contesting candidate for the purposes of section 52. This is a deeming provision and creates a legal fiction. The effect of such a legal fiction however is that a position, which otherwise would not obtain, is deemed to obtain under those circumstances. This provision, therefore,

warrants the conclusion that a contesting candidate whose name was included in the list under section 38, but who retires from the contest under section 53-A(2), continues to be a contesting candidate for the purposes of the Act though by reason of such retirement, it would be unnecessary for the constituency to cast its votes in his favour at the poll. Such a candidate continues to be contesting candidate for the purposes of section 82 of the Act, notwithstanding his retirement from the contest under section 55-A(2).

An election petition calling in question any election, can be presented by any candidate at such election or any elector on one or more of the grounds specified in sections 100(1) and 101 to the Election Commission and a petitioner in addition to calling in question the election of the returned candidate or candidates, may further claim a declaration that he himself or any other candidate, has been duly elected. Where a petitioner claims such further declaration, he must join as respondents to his petition all the contesting candidates other than the petitioner and also any other candidate against whom allegations of any corrupt practices are made in the petition. The words "other than the petitioner" are meant to exclude the petitioner, when he happens to be one of the contesting candidates, who has been defeated at the polls and would not apply where the petition is filed for instance by an elector. An elector filing such a petition would have to join all the contesting candidates whose names were included in the list of contesting candidates prepared and published by the returning officer in the manner prescribed under section 38, that is to say, candidates who were included in the list of validly nominated candidates and who had not withdrawn their candidature within the period prescribed. Such contesting candidates will have to be joined as respondents to such petition irrespective of the fact that one or more of them, had retired from the contest under section 55-A(2). If the provisions of section 82, which prescribes who shall be joined as respondents to the petition, are not complied with, the Election Commission is enjoined under section 85 of the Act to dismiss the petition. Section 90(3) similarly enjoins the Election Tribunal to dismiss an election petition which does not comply with the provisions of section 82 or section 117 notwithstanding that it has not been dismissed by the Election Commission under section 85."

This decision of the Supreme Court clearly lays down that, in the election petition, where the further relief is claimed that it be declared that he, himself or any other candidate has been duly elected, all the contesting candidates shall be made parties to the election petition. The word "contesting candidates" include also the contesting candidates, who had retired from contest. It thus indicates that in that class of cases, such contesting candidates are to be made parties to the petition, in view of the provisions of section 82 clause (a) of the Act. The words used "any other candidate" in clause (b) of section 82, would, therefore, mean persons other than such persons, in that event. It cannot, therefore, be said that this clause (b) was only meant for such contesting candidates, who had retired from the contest. Such persons will have to be joined as parties under clause (a) of section 82 of the Act. They being already to be parties under clause (a), no necessity could arise for making them as parties, in case, allegations of corrupt practice had been made against them. It, therefore, indicates that the object of the Legislature in framing this clause (b) of section 82 was to implead "any other candidate", who is not required to be made a party under clause (a), to be made a party, if the allegations of any corrupt practice were made in the petition against them.

The Allahabad decision is dated 26th March, 1958. This Supreme Court decision is dated 22nd April 1958. There was a conflict of rulings of the various High Courts regarding the point decided by the Supreme Court in the aforesaid decision. After the decision of the Supreme Court, in my opinion, the reasoning adopted by the Allahabad High Court, regarding the interpretation of this clause (b) of section 82 of the Act, is proved to be sounder.

39. In para. 12 of the judgment, at pages 816 and 817, this question has been referred to, by the Allahabad High Court. The observations made therein are as under:—

"Another line of argument that was put forward on behalf of the respondents to support the interpretation which we have accepted above was that, in case candidate, who have withdrawn their candidature are held not to be necessary parties under clause (b) of section 82 of the Act, the purpose of this clause would be defeated at least in those classes of cases where the petitioner seeks the

further declaration that he himself or any other candidate has been duly elected.

In the case of such a petition, all the contesting candidates other than the petitioner are impleaded as respondents under clause (a) of section 82 of the Act and the argument was that, if candidates who have withdrawn their candidature are excluded, no one can be impleaded as a party under clause (b) of section 82 of the Act.

This argument proceeded on the basis that the expression "contesting candidates" in clause (a) of section 82 of the Act includes all persons who remained after withdrawal of candidature, i.e., persons who either subsequently retired from the contest or continued as candidates at the poll. If they are already impleaded as parties under clause (a) of section 82 of the Act, persons who can be impleaded as parties under clause (b) of section 82 of the Act can only be candidates, who withdraw their candidature. On behalf of the petitioners it was, however, urged that the expression "contesting candidates" used in clause (a) of section 82 of the Act does not include candidates who retire from the contest under section 55-A of the Act and consequently, those would be the persons to be impleaded under clause (b) of section 82 of the Act in those petitions where the further declaration mentioned above is also sought.

It appears to us to be unnecessary to go into the controversial point whether the expression "contesting candidates" in clause (a) of section 82 of the Act does or does not include the candidates, who retire from the contest under section 55-A of the Act. For the purpose of interpreting clause (b) of section 82 of the Act, we need not, in our opinion, rely on any interpretation of clause (a) of section 82 of the Act which interpretation itself is open to argument.

As we have said earlier, whether the expression "contesting candidates" used in clause (a) of section 82 of the Act does or does not include candidates who retire from the contest under section 55-A of the Act, it appears that, so far as clause (b) of section 82 of the Act is concerned, it must be so interpreted as to include candidates who withdraw their candidature."

In view of the decision of the Supreme Court, that the expression "contesting candidates" used in clause (a) of section 82 of the Act, does include candidates, who retire from the contest under section 55-A of the Act, a further ground can be added to show the correctness of the interpretation put on clause (b) of section 82 of the Act, by the Allahabad High Court.

40. At this stage, I will also refer to an argument advanced on behalf of the petitioner, by the learned advocate Shri Jaywant, that the allegations of corrupt practice made against Mr. Belekar, were not in his capacity as a candidate. He had not committed corrupt practices in his capacity, as a candidate. He had already withdrawn his candidature within the prescribed period. The corrupt practices alleged to be committed are committed subsequent to that date, admittedly. He is, therefore, not a necessary party to the election petition. Such an argument was also advanced before Their Lordships of the Allahabad High Court, in the very decision, which I am discussing. That discussion finds place in para. 13 of the judgment, at page 817. The relevant observations made therein regarding it, are as under:—

"One other point that was urged on behalf of the petitioners was that clause (b) of section 82 of the Act should, in any case, be interpreted as requiring a petitioner to join as respondents only those candidates against whom allegations of corrupt practice are made in the petition in their capacity as candidates, implying that they are necessary parties only, if corrupt practices are alleged to have been committed by them while they were candidates and in their capacity as such.

We do not think that the language of clause (b) of section 82 of the Act justifies such an interpretation. Had it been the intention that only those candidates were necessary parties against whom allegations were of commission of corrupt practice in their capacity as such, it could have been made manifest by introducing appropriate words to convey this intention.

Further, as we have held earlier, the definition of the word "candidate" in clause (b) of section 79 of the Act includes a person who claims to have been duly nominated as a candidate at any election. Such a person does not actually participate in the election as a candidate. His candidature is confined to the time of nomination and the rejection of his nomination.

He cannot possibly commit any acts of corrupt practice at that time and yet by including such a person in the definition of the word "candidate" in clause (b) of section 79 of the Act, the Legislature has laid down that he must be impleaded as a party under clause (b) of section 82 of the Act, if there are allegations of corrupt practice against him.

In these circumstances, clause (b) of section 82 of the Act must be interpreted as covering cases where a candidate is *alleged to have committed a corrupt practice at any time* even though he may have ceased to participate in the contest by withdrawing his candidature or by retiring from the contest or may have been incapable of participating in the election because his nomination was rejected but he claims to have been duly nominated."

In the rest of the Judgment of the Allahabad High Court, another point is discussed. I need not refer to the observations made in that connection, *in extenso*, as that point is now concluded by the two decisions of the Supreme Court, which I have already referred to above. I will only shortly state the observations made in this Allahabad High Court decision, regarding it.

"An election petition which does not comply with section 82(b) of the Act cannot be amended by the Election Tribunal by permitting the impleading of the necessary parties who had not been joined or by striking off the pleadings on account of which it was necessary to implead those parties. There is no duty on the Election Tribunal to give the petitioners an unsought opportunity of amendment of the petitions for the purpose of impleading the necessary parties. In any case, the Tribunals would not be justified in permitting the impleading of necessary parties by subsequent amendment applications at a time when the election petitions filed against those parties, who had been omitted, would have been time-barred."

41. At this stage, I would like to refer to sub-section (4) of section 90 of the Act. It runs as under:—

"(4) Any candidate not already a respondent shall, upon application made by him to the Tribunal within fourteen days from the date of commencement of the trial and subject to the provisions of section 118, be entitled to be joined as a respondent."

The Explanation added to it runs as under:—

"Explanation.—For the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the Tribunal and answer the claim or claims made in the petition."

No arguments have been advanced at the Bar, before me, by referring to this section. But as there are certain observations in one of the decisions of our own High Court, I have thought it advisable to refer to this sub-section. In my opinion, this sub-section is an enabling section. It empowers or gives a right to any candidate, who is not already a respondent, to be joined as a respondent within the period prescribed therein. It may happen that certain candidates are not necessary parties to the election petition, in view of the provisions of section 82 of the Act. The petitioner is, therefore, not obliged to join them as respondents to the election petition. The object of the trial of the election petition is to see that the purity of the election is maintained. One of the objects of the election petition also, is the same. In such a case, any candidate can come forward, and is entitled to be joined as a respondent, if he makes such an application within the prescribed period. It has nothing to do with clause (b) of section 82 of the Act.

42. In a decision of our own High Court reported in AIR 1958 Bombay 397, Y. B. Chavan v. K. T. Maugalmurti and another), the following observations have been made:—

"In an election petition filed by the respondent against the petitioner, the latter submitted that as the provisions of section 82, Representation of the People Act, 1951, were not complied with, the petition should be dismissed in limine under section 90(3) read with section 82(a). The Election Tribunal disallowed this objection holding that the provisions of section 82 were complied with and the election petition could not be dismissed under section 90(3). The petitioner challenged the correctness of that order under Articles 226 and 227, Constitution of India."

It was held,

"that the objection raised by the petitioner went to the root of the matter, and the petition under Article 226 was maintainable."

This is one of the decisions, which has been confirmed by the Supreme Court, which I have already referred to above.

"The expression "all the contesting candidates" means all those who took part in the contest at the poll and also those who may have under section 55-A retired from the contest. To put it in different language, one may say that the expression "all the contesting candidates" means not merely those candidates who contested at the election but also those candidates, who contested for the election."

This construction is legitimate for the reason that an election is one continuous process and if it is one continuous process, what is sought to be challenged is the election, *which means the election as it commenced and as it ended*. It may well happen that a contesting candidate who has retired from contest may or may not have interest in the result of the election petition. It may be that such a contesting candidate has no chance of himself being elected, but the law contemplates that an election dispute should be settled once and for all, the dispute must be settled in the presence of every candidate, who is either immediately or remotely affected by the result."

It will be pertinent to note that Their Lordships in this case, were deciding the case wherein the interpretation of clause (a) of section 82 of the Act was involved and not that of clause (b) of section 82 of the Act. At page 401, the following observations have been made:—

"If the petitioner has asked only for a declaration that the election of all or any of the returned candidates is void, it is sufficient if the petitioner joins to his petition as respondents all the returned candidates, which obviously means all the successful candidates at the election. But if the petitioner is not satisfied with this declaration only but, in addition, claims a further declaration that the petitioner himself or any other candidate has been duly elected, he is required to join to his petition all the contesting candidates and the provision is mandatory, because section 82 begins with the words: "A petitioner shall join as respondent to his petition" It is obvious, therefore, that the provision is mandatory and where the provision in relation to the joinder of parties is not strictly complied with, the consequence is mentioned in section 90(3) which says that the Tribunal shall dismiss an election petition, which does not comply with the provisions, among others, of section 82. When the expression "contesting candidates" has not been defined in the Act, the task of interpreting is by no means easy. Once the expression is defined in the interpretation section, it is possible to apply the definition to all those Parts of the Act in which the expression occurs. But that is not the situation here. It is significant that the expression "candidate" is defined in section 79(b) and it has some materiality, because section 82, by clause (b) provides that a petitioner shall join as respondent to his petition, any other candidate against whom allegations of any corrupt practice are made in the petition. So that, what section 82 contemplates is this. In the case of a declaration by which the election of a returned candidate

is sought to be declared as void, a petitioner has to join to his petition all the returned candidates. Where a petitioner wants a further declaration besides the above declaration that the petitioner himself or any other candidate has been duly elected, he must join to his petition all the contesting candidates. But by section 82(b), there is a further requirement whereby a petitioner is required to join as respondent to his petition any other candidate against whom allegations of any corrupt practice are made in the petition. Now, the expression "any other candidate" must obviously refer to a candidate other than the candidates mentioned in clause (a) of section 82, because whereas in section 82(a) reference is made to the returned candidates, and reference is made to all the contesting candidates, reference is made in section 82(b) to any other candidate. Now, the expression "candidate" is defined in section 79(b) as meaning a person who has been or claims to have been duly nominated as a candidate at any election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate. The expression "candidate" occurring in section 79(b) would include a number of persons. A candidate may be a candidate who has been duly nominated as distinguished from a candidate who has been validly nominated. It may mean a person who may claim to have been duly nominated but who in fact may not have been duly nominated and it embraces every other person, who shall be deemed to have been a candidate as from the time, when the person concerned held himself out as a prospective candidate. Apart from the fact that the provisions of section 82 are mandatory, there is in section 90(4) a provision whereby if a person is not joined as a party to the petition, he may be joined under section 90(4) which provides:

"Any candidate not already a respondent shall, upon application made by him to the Tribunal within fourteen days from the date of commencement of the trial and subject to the provisions of section 119, be entitled to be joined as a respondent."

The provision in section 119 is the provision relating to security for costs from a respondent. Therefore, when section 82 is read both with reference to clause (a) and clause (b), it is clear that all the returned candidates must be made parties to the petition, when only one declaration is sought and all the contesting candidates must be made parties to the petition when both the declarations are sought and any other candidate may be made a party when allegations of any corrupt practice are made in the petition. There is a further proviso in section 90(4) whereby a candidate may be joined as a party to the petition upon an application made by him, provided he gives security for costs as contemplated by section 119."

These last observations made, created some doubt in my mind and that is the reason, why I have thought it fit to discuss this question. It will be pertinent to note that Their Lordships, in this decision, were deciding the case, involving the interpretation of clause (a) of section 82 of the Act. They were not deciding the case involving the interpretation of clause (b) of section 82 of the Act. On reading the entire portion of the relevant Judgment, it appears that Their Lordships have, time and again stated therein that the provisions of section 82 are mandatory and the consequence of non-compliance with it, will be the dismissal of an election petition under section 90(3) of the Act. As I understand, Their Lordships never meant to suggest that the persons referred to in clause (a) of section 82 of the Act, were necessary parties, and persons referred to in clause (b) of section 82 of the Act were proper parties. As I understand, what Their Lordships were suggesting, was that the Act entitles any candidates to join as a party under section 90(4) of the Act. That is a right given to any candidate to be entitled to be joined as a party, if he so wishes. It has nothing to do with the competence of the petition. The petitioner has to join all persons referred to, in clauses (a) and (b) of section 82 of the Act as parties to the election petition. In section 82, it is first stated that "A petitioner shall join as respondents to his petition" and thereafter follows the dash, and after the dash, these two clauses (a) and (b) are given. It is, therefore, evident that to both these clauses, the words "A petitioner shall join as respondents to his petition", will apply. It is therefore, evident that this section 82 clearly enjoins a petitioner, to join as respondents to his petition, persons falling in clause (a)

as well as persons falling in clause (b). These two clauses (a) and (b) are joined by the word "and", and that circumstance also makes it quite clear the position, regarding it. Section 90(3) also states that the Tribunal shall dismiss an election petition, which does not comply with the provisions of section 82, notwithstanding that it had not been dismissed by the Election Commission under section 85. It does not state that the Tribunal shall dismiss an election petition, which does not comply with the provisions of section 82(a) only. If the intention of the Legislature was that clause (b) of Section 82 of the Act related to proper parties only, the Legislature would not have framed section 82, as it has been framed. Further, in section 90(3), the Legislature would have said that non-compliance with the provisions of section 82(a) only, will entail the dismissal of an election petition. In the Supreme Court decision referred to above by me, it has been distinctly stated that non-compliance of section 82, will entail the dismissal of the election petition. Even in the Patna decision relied upon by the learned advocate for the petitioner, the Patna High Court has taken the view that, if there is non-compliance with the provisions of clause (b) of section 82, it will entail the dismissal of an election petition. In the Allahabad decision, which I have already referred to above *in extenso*, the same view is stated. In the Bombay decision also referred to above, at places more than one, Their Lordships have, in unequivocal terms, stated that non-compliance with the provisions of section 82 will entail, the dismissal of an election petition, under section 90(3) of the Act. For the reasons given above, I prefer the view taken by the Allahabad High Court to that of Patna High Court. In the decisions referred to above.

43. Looking to the entire scheme of the Act and the definitions given therein of the word "candidate" in section 79(b) of the Act and there being nothing in reference to context to the contrary in section 82, clause (b), of the Act, the interpretation put by the Allahabad High Court to the clause (b) of section 82, appears to be sounder and correct. I, therefore, accept the contention advanced on behalf of the respondent and reject the contention advanced on behalf of the petitioner, and hold that, by the non-joinder of Shri N. L. Belekar, against whom allegations of corrupt practice have been made in the petition, the election petition is liable to be dismissed under section 90(3) of the Act. The net result of this finding is that the present election petition is liable to be dismissed, on account of non-joinder of a contesting candidate Haridas Awade or Awale, against whom allegations of corrupt practice have been made and also on account of the non-joinder of Shri N. L. Belekar, a candidate, who had withdrawn his candidature within the prescribed period and against whom allegations of corrupt practice have been made, in the election petition.

44. The next question urged on behalf of the petitioner, by the learned advocate Shri Jaywant, was that, even if the petition was liable to be dismissed under section 90(3) of the Act, the tribunal was bound to record its findings regarding the corrupt practices committed by the respondent and other persons, in view of the provisions of section 99 of the Act. This interesting question arises in this case. As against this, the learned advocate Shri Bobade for the respondent contended that the Tribunal had no jurisdiction or authority to record any such findings, the moment, the Tribunal comes to the conclusion that the petition is liable to be dismissed under sub-section (3) of section 90 of the Act. In support of their arguments, both the advocates have invited my attention to several provisions of the Act, which I will presently refer to.

45. Part VI of the Act deals with disputes regarding elections, presentation of election petitions to Election Commission, trial of election petitions, by the Tribunals, withdrawal and abatement of election petitions, appeals, costs and security for costs. Part VII of the Act deals with corrupt practices and electoral offences. Part VIII of the Act deals with disqualifications for membership and for voting.

In the Chapter I of Part VI, definitions of "candidate" etc. are given. Section 80, which falls in Chapter II of Part VI, deals with the question regarding presentation of elections petitions to Election Commission. Section 80 states that no election shall be called in question except by an election petition presented in accordance with the provisions of this Part. It is, therefore, evident that an election can only be called in question, if an election petition is presented, in accordance with the provisions of this Part VI.

Section 82 deals with the question, who are necessary parties to the election petition? Section 84 states about the reliefs, that may be claimed by the petitioner. Section 85 deals with the procedure to be followed by the Election Commission on receiving an election petition.

Chapter III of Part VI of the Act deals with the question regarding the trial of election petitions. Section 90 deals with the procedure to be followed before the Tribunal. In that section, given in this Chapter III of Part VI of the Act, falls then, sub-section (3). It enjoins upon the Tribunal to dismiss an election petition, which does not comply with the provisions of section 81, section 82 or section 117, notwithstanding that it has not been dismissed by the Election Commission under section 85. By an amending Act No. 58 of 1958, an Explanation has been added to this sub-section (3), which runs as under:—

"Explanation—An order of the Tribunal dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98".

This Explanation, which had come into force at the material date, in this election petition, lays down that an order of the Tribunal dismissing an election petition is to be deemed to be an order under clause (a) of section 98.

Section 91 of the Act deals with a question regarding appearance before the Tribunal and section 92 deals with powers of the Tribunal and section 97 deals with the question regarding recrimination, when seat claimed.

Section 98 deals with the question regarding the decision of the Tribunal. It runs as under:—

'Decision of the Tribunal.—At the conclusion of the trial of an election petition, the Tribunal shall make an order—

- (a) dismissing the election petition; or
- (b) declaring the election of all or any of the returned candidates to be void; or
- (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected."

Another relevant section for our purposes is section 99, which deals with a question, regarding other orders to be made by the Tribunal. Sub-section (1) of it runs as under:—

"(1) At the time of making an order under section 98, the Tribunal shall also make an order—

- (a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording—
 - (i) a finding whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice; and
 - (ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and
- (b) fixing the total amount of costs payable, and specifying the persons by and to whom costs shall be paid."

Thereafter, there is a provision which runs as under:—

"Provided that a person who is not a party to the petition shall not be named in the order under sub-clause (ii) of clause (a) unless—

- (a) he has been given notice to appear before the Tribunal and to show cause why he should not be so named; and
- (b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the Tribunal and has given evidence against him, of calling evidence in his defence and of being heard."

Sub-section (2) of this section 99 is not material for our purposes.

46. Shri Bobade, the learned advocate for the respondent contended that the significance of the mandatory provisions in section 82(b) is that the candidate against whom corrupt practice is charged, should have an opportunity to meet it

Section 99 of the Act is deadily against the petitioner. It classifies two sets of persons—

- (1) who were not made parties; and
- (2) who were made parties.

Section 99(1) ends before a proviso to it, begins. He calls the proviso, a second part. It should be read with section 82(b). In short, his contention was that section 99 will apply only, if the persons alleged to have committed corrupt practices, are not parties to the petition.

47 This argument of his, in my opinion is not well-founded. Section 99, sub-section (1) states that at the time of making an order under section 98, the Tribunal shall also make an order—

“(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording—

- (i) a finding whether any corrupt practice has been or has not been proved to have been committed at the election, and the nature of that corrupt practice; and
- (ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and

In my opinion, this sub-clause (ii) of clause (a) of section 99(1) of the Act includes all persons, whether they were parties to the petition or not. Proviso to this sub-section (1) makes that position abundantly clear. It states that a person, who is not a party to the petition shall not be named in the order under sub-clause (ii) of clause (a) unless a notice is given to him to show cause, why he should not be named and, if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness, who has already been examined by the Tribunal and has given evidence against him, of calling evidence in his defence and of being heard. If in the sub-clause (ii) of clause (a) of sub-section (1) of section 99 were included only the persons, who were not already parties to the petition, there could not have been any reason to add this proviso. This conclusion of mine gets support from the decision reported in AIR 1958 Allahabad 809.

At page 815, in the body of the Judgment this point is touched and the following observations have been made:—

“Section 99 of the Act, however, contains a provision that a person who is not a party to the petition shall not be named by the tribunal in its order unless he has been given notice to appear before the tribunal and to show cause why he should not be so named and if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the tribunal and has given evidence against him, of calling in his defence and of being heard.

This provision is applicable to every person whether he be a candidate or merely a voter. In spite of this provision contained in section 99 of the Act, the Legislature proceeded to make the further provision in section 82(b) of the Act laying down that any candidate against whom allegations of corrupt practice are made in the petition must necessarily be impleaded as a party to the petition.”

The argument advanced by the learned Advocate Shri Jaywant, that section 99 applies even to the persons, who are alleged to have committed corrupt practice and they ought to have been joined as parties, appears to me to be well-founded. His argument that, that proviso clarifies that position and the proviso would have been nugatory, if the respondent's argument was sound, is incorrect. It is an accepted position of law now, that, in an election petition, trial begins when the petition is sent to the Tribunal. Decision, under section 90(3) will also be, in the course of a trial.

48. Relying upon the Explanation added to section 90(3), which I have already referred to above, an argument has been advanced by the learned advocate Shri Jaywant that, even in case, the petition is being dismissed by the Tribunal, under section 90(3) of the Act, the Tribunal is bound to make an inquiry

regarding the corrupt practices alleged in the election petition and is bound to record the findings of the corrupt practices alleged, and, if they are proved to be committed to state, the names of the persons, who have committed such corrupt practices. So far as the respondent is concerned, if he has committed such a corrupt practice, the Tribunal is bound to record its finding regarding it, even though the election petition is liable to be dismissed under section 90(3) of the Act. This argument is advanced on the basis that such an order of dismissing an election petition under section 90(3) of the Act is deemed to be an order of dismissing a petition under clause (a) of section 98 of the Act. The provisions of section 99 will, therefore, apply and the Tribunal is bound to record such findings. It was further urged by him that the object of the Legislature in enacting this Act and in making several provisions in the Act, is to maintain the purity of elections. If such a course, as suggested by him, is not adopted and the election petition is dismissed on a technical ground and no such findings are recorded, this object of the Legislature will be frustrated.

I have given the most anxious consideration to these arguments advanced on behalf of the petitioner, by the learned Advocate Shri Jaywant. I feel that they are not well-founded. The Explanation added to sub-section (3) of section 90 by the Amending Act No. 58 of 1958, only states that an order of the Tribunal dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98. It does not state that it shall be an order made under clause (a) of section 98. It is only to be deemed to be an order made under clause (a) of section 98. It is true that it is not stated in the Explanation that it is to be deemed to be an order made under clause (a) of section 98 for the purposes of section 116A only. Section 116A states that an appeal shall lie from every order made by a Tribunal under section 98 or section 99 to the High Court of the State in which the Tribunal is situated. By the fiction introduced by the Legislature, the order dismissing the election petition under section 90(3) of the Act, is to be deemed to be an order dismissing the election petition under clause (a) of section 98 of the Act. It cannot mean that it is an order passed by an Election Tribunal at the conclusion of the trial of an election petition under clause (a) of it, dismissing the election petition. It is only to be deemed to be such an order.

Section 99 of the Act states that, at the time of making an order under section 98, the tribunal has also to make an order referred to, therein. It is not stated in the Explanation given to sub-section (3) of section 98 of the Act, that such an order is also to be deemed to be an order under section 98(a), for the purpose of section 99.

If we accept this argument advanced on behalf of the petitioner as a sound argument, anomalous results will follow. Section 82(b) enjoins upon the petitioner to join all candidates as parties against whom allegations of corrupt practice have been made. Without joining them as parties, and without there being a competent election petition, the Tribunal will be recording findings of corrupt practice against them. It could never have been contemplated by the Legislature. In spite of the fact, that the petition is dismissed under section 90(3) of the Act, the Tribunal will be recording a finding of corrupt practice against the returned candidate or any other candidate, if it accepts the allegations of corrupt practice made against him in the election petition.

Section 140 of the Act states that the corrupt practices specified in section 123 shall entail disqualification for membership of Parliament and of the Legislature of every State for a period of six years counting from the date on which the finding of the Election Tribunal as to such practice, takes effect, under this Act. Section 107 of the Act states that every order of the Tribunal under section 98 or section 99 shall take effect as soon as it is pronounced by the Tribunal.

The perusal of these sections indicates that, in case, the Tribunal comes to the conclusion that the respondent has committed the corrupt practices specified in section 123, it shall entail the respondent's disqualification for membership of the Parliament and of the Legislature of every State for a period of six years commencing from the date of the decision of the Tribunal.

Section 141 states that, if any person after the commencement of this Act is, upon the trial of an election petition under Part VI, found guilty of any corrupt practice, he shall for a period of six years from the date on which such finding takes effect, be disqualified for voting at any election. These are the serious consequences, which are to ensue, if such findings are recorded by the Tribunal.

In spite of the clear mandatory provision that the petition is to be dismissed for non-compliance with the provisions of section 82, such an anomalous result will ensue, if this argument advanced by Mr. Jaywant is accepted. It could never be the intention of the Legislature.

The only reasonable interpretation that could, therefore, be put is that the Tribunal is not clothed with an authority to record a finding of corrupt practice, if the petition is liable to be dismissed under section 90(3) of the Act. If the Legislature intended that even if the election petition is not presented in accordance with the provisions of Part VI of the Act and there are allegations of corrupt practice made in that petition against the returned candidate or other candidates or other persons, it should record its findings regarding the commission of corrupt practices by them, for maintaining the purity of the election, the Legislature would not have framed section 90(3), as it has framed. It could have said that, in such a case, the election of the returned candidate may not be declared to be void or a further declaration that any other candidate was duly elected may not be given. For that purpose, the election petition be dismissed, but the Tribunal should proceed with an inquiry regarding the allegations of the commission of corrupt practice. By dismissal of an election petition under section 90(3) of the Act, the relief claimed by the petitioner regarding the declaration that the returned candidate's election is void, fails. At the same time, in case, the Tribunal comes to the conclusion that the respondent has committed the corrupt practice alleged, he becomes disqualified for being a member of the Parliament and a member of the Legislative Assembly from the date of the decision of the Tribunal for a period of six years. He also becomes disqualified for voting. Practically, by the ensuing of that consequence, the petitioner practically gets the relief, which he had claimed, in the election petition. Such an anomalous result will follow, if the petitioner's argument is accepted, as a sound argument.

49. The learned advocate Shri Bobade for the respondent, urged that the Tribunal had no jurisdiction to proceed with the election petition, if there was non-compliance with the provisions of section 82 of the Act. The jurisdiction of the Tribunal was a limited jurisdiction. There is limitation inherent in its creation. Its power is abridged. "No election can be called in question unless the election petition is presented in accordance with the provisions of Part VI of the Act. The provisions of section 82 after the amendment of 1956, are mandatory. By necessary implications, it means that, in case the Tribunal finds that the non-compliance with the provisions of section 82 of the Act, a command is that the Election Tribunal shall not proceed with it. He invited my attention to a decision reported in AIR 1952 S.C. 64 (*N. P. Ponnuswami v. Returning Officer, Namakkal*).

At page 65, the observations made are as under:—

"The Representation of the People Act is a self-contained enactment so far as elections are concerned, which means that whenever, we have to ascertain the true position in regard to any matter connected with elections, we have only to look at the Act and the rules made thereunder. Section 80, which is drafted in almost the same language as Article 329(b), provides that 'no election shall be called in question except by an election petition presented in accordance with the provisions of this Part'. Section 80, along with Sections 100, 105 and 170 are the main provisions regarding election matters being judicially dealt with, and there is no provision anywhere to the effect that anything connected with elections can be questioned at an intermediate stage.

The right to vote or stand as a candidate for election is not a civil right but is a creature of status or special law and must be subject to the limitations imposed by it"

He also invited my attention to para. 11 of the judgment, at page 69. The relevant observations made therein are as under:—

"The representation of the People Act, 1951, which was passed by Parliament under Article 327 of the Constitution, makes detailed provisions in regard to all matters and all stages connected with elections to the various legislatures in this country. That Act is divided into 11 parts, and it is interesting to see the wide variety of subjects, they deal with. Part II deals with 'the qualifications and disqualifications for membership'. Part III deals with the notification of General Elections, Part IV provides for the administrative machinery

for the conduct of elections, and Part V makes provisions for the actual conduct of elections and deals with such matters as presentation of nomination papers, requirements of a valid nomination, scrutiny of nominations, etc., and procedure for polling and counting of votes. Part VI deals with disputes regarding elections and provides for the manner of presentation of election petitions, the constitution of election tribunals and the trial of election petitions. Part VII outlines the various corrupt and illegal practices which may affect the elections, and electoral offences. Obviously the Act is a self-contained enactment so far as elections are concerned, which means that whenever we have to ascertain the true position in regard to any matter connected with elections, we have only to look at the Act and the rules made thereunder..... Section 100, as we have already seen, provides for the grounds on which an election may be called in question, one of which is the improper rejection of a nomination paper. Section 105 says that "every order of the Tribunal made under this Act shall be final and conclusive". Section 170 provides that "no civil Court shall have jurisdiction to question the legality of any action taken or of any decision given by the Returning Officer or by any other person appointed under this Act in connection with an election". These are the main provisions regarding election matters being judicially dealt with, and it should be noted that there is no provision anywhere to the effect that anything connected with elections can be questioned at an intermediate stage."

He also invited my attention to a decision reported in AIR 1952 S.C. 319 (Ebrahim Aboobakar and another v. Custodian General of Evacuee Property, New Delhi). He referred to paras 13 and 14 of that judgment. Relevant observations made therein are as under:—

"The remaining three questions canvassed before us, unless they are of such a nature as would make the decision of the respondent dated the 13th May 1950 a nullity, cannot be the subject-matter of a writ of 'certiorari'. It is plain that such a writ cannot be granted to quash the decision of an inferior court within its jurisdiction on the ground that the decision is wrong. Indeed, it must be shown before such a writ is issued that the authority which passed the order acted without jurisdiction or in excess of it or in violation of the principles of natural justice. Want of jurisdiction may arise from the nature of the subject-matter, so that the inferior court might not have authority to enter on the inquiry or upon some part of it. It may also arise from the absence of some essential preliminary or upon the existence of some particular facts collateral to the actual matter which the court has to try and which are conditions precedent to the assumption of jurisdiction by it. But once it is held that the court has jurisdiction but while exercising it, it made a mistake, the wronged party can only take the course prescribed by law for setting matters right inasmuch as a court has jurisdiction to decide rightly as well as wrongly. The three questions agitated before us do not seem to be questions which bear upon the jurisdiction of the court of appeal, or its authority to entertain them.

It was contended that no court of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit of the jurisdiction depends and that the questions involved in the appeal before the respondent were collateral to the merits of the case. As pointed out by Lord Esher, M. R., 'REG. v. INCOME-TAX COMMISSIONERS', (1888) 21 Q B D 313, the formula enunciated above is quite plain but its application is often misleading. The learned Master of the Rolls classified the cases under two categories thus:

"When an inferior Court or tribunal or body which has to exercise the power of deciding facts, is first established by Act of Parliament, the Legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise

the jurisdiction without its existence, what they do may be questioned, and it will be held that they had acted without jurisdiction. But there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists, as well as the jurisdiction, on finding that it does exist to proceed further or do something more. When the Legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider whatever jurisdiction, they give them, whether there shall be any appeal from their decision, for otherwise, there will be none. In the second of the two cases, I have mentioned, it is erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without appeal being given, there is no appeal from such exercise of their jurisdiction."

In my opinion, the argument that question in issue relates to the jurisdiction of the Tribunal, is not well-founded. The Tribunal has jurisdiction to hear and decide the election petition referred to it, by the Election Commission. The Tribunal is clothed with an authority or power to dismiss the election petition, if it finds the non-compliance with any of the provisions of section 82 of the Act. In my opinion, it is in the nature of a preliminary objection and the Tribunal is enjoined to dismiss such an election petition, if it accepts the correctness of the preliminary objection urged.

50. In a decision reported in AIR 1959 S.C. 827, (Chandika Prasad v. Shiv Prasad) at page 829, the following observations have been made by the Supreme Court.

"It is true that in terms and in form, the order was passed under section 90, sub-section (3); and it is also true that the right to prefer an appeal is a creature of the statute and no appeal can be held to be competent unless it is shown that such a right flows from the relevant statutory provision itself. In order to decide whether or not, an order passed under section 90, sub-section (3) can be regarded in law and in substance as an order passed under section 98, it would be relevant to consider the scope and effect of the provisions of the said two sections. Section 98(a) provides that at the conclusion of the trial of an election petition the tribunal shall make an order dismissing the election petition. There is no doubt that in the present case the Election Tribunal has dismissed the election petition filed by respondent 1. But the appellant's contention is that this dismissal cannot be said to be under section 98(a) because the order dismissing the petition has not been passed at the conclusion of the trial of the election petition. This argument is not well founded. Section 90, sub-section (3) under which the impugned order purports to have been passed, occurs in Chapter III of Part VI which deals with the trial of election petitions. In other words, Section 90, sub-section (3) confers power on the tribunal to dismiss the election petition after the trial of the election petition has commenced. The scheme of Chapter III clearly indicates that once an election is referred to an Election Tribunal for trial under section 86, the tribunal is possessed of the petition and all proceedings before it are proceedings in the trial of the said petition. Section 85 shows that for failure to comply with the provisions of sections 81, 82 and 117, the Election Commission is empowered to dismiss the election petition. If the Election Commission exercises its jurisdiction and passes an order dismissing any election petition, it may be said that the election petition never reached the stage of trial; but once the petition has passed the scrutiny of the Election Commission under section 85 and it has been referred to the Election Tribunal for trial, any further action taken by the parties or any order passed by the tribunal under the said petition would constitute a part of the trial of the said petition. This question has been incidentally considered by this Court in Harish Chandra Bajpai v. Triloki Singh, 1957 SCR 370 at p. 387: [(S) AIR 1957 SC 444 at p. 453] while it was dealing with section 90, sub-section (2) of the Act; and it has been held that "the

provisions of Chapter III read as a whole clearly show that 'the trial' is used as meaning the entire proceedings before the tribunal from the time the petition is transferred to it under section 86 until the pronouncement of the award". Therefore, there can be no doubt that the order passed under section 90, sub-section (3) is an order passed at the conclusion of the trial. It is true that it is an order on a preliminary point of law raised by the appellant; but even so the decision of the preliminary issue is undoubtedly a part of the trial of the petition and it cannot be said that the order passed on such a preliminary point is not an order passed at the conclusion of the trial.

Section 90, sub-section (3) provides that the tribunal shall dismiss an election petition which does not comply with the provisions of sections 81, 82 or 117 notwithstanding that it has not been dismissed by the Election Commission under section 85. It would thus be clear that an objection raised against the competence of the election petition on the ground that the provisions of the aforesaid sections have not been complied with, can be considered by the Election Commission *suo moto* under section 85; and if it is upheld, the election petition can be dismissed without any further enquiry; but if the Election Commission does not dismiss the petition under section 85, then, the same objection can be raised before the Election Tribunal by the respondent to the election petition; and when it is so raised it assumes the character of a preliminary objection and is dealt with by the Election Tribunal as any preliminary objection would be dealt with by a civil court under the Code of Civil Procedure. That being so, a preliminary objection has been tried and the decision on the preliminary objection being in favour of the respondent, the election petition is dismissed. Though the order of dismissal in form may be under section 90, sub-section (3), it is in substance and in law an order of dismissal passed at the conclusion of the trial and must be deemed to be an order under section 98(a).

At page 830, instructive observations have been made, which are as under:—

"It cannot be suggested that, where an order of dismissal is passed under section 90, sub-section (3), the tribunal cannot make an appropriate order of costs. This provision also indicates that the order passed under section 90, sub-section (3) is in law and in substance an order passed under section 98(a). It is true that in cases where such an order is passed section 99(1)(a) would not come into operation, but that can hardly affect the position that an order under section 90, sub-section (3) is nevertheless an order under section 98."

This last observation made by the Supreme Court clearly indicates that, if the election petition is dismissed under section 90(3) of the Act, the provisions of section 99(1)(a) could not come into operation. That fortifies my conclusion, which I have already referred to above, that the Tribunal could not record a finding regarding the corrupt practice, in case, the election petition is dismissed, under section 90(3) of the Act.

It has been further observed therein as under:—

"We would like to add that by Act 58 of 1958 an explanation has been added to section 90, sub-section (3) which clarifies the legislative intention on this point. This explanation provides that an order of the tribunal dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98. After the enactment of this explanation there can be no doubt that an order passed under section 90, sub-section (3) would be appealable under section 116A of the Act."

This decision of the Supreme Court indicates that the point involved is really in the nature of a preliminary nature which, if accepted, goes to the root of the matter. It cannot be said to be a question relating to the jurisdiction of the Tribunal.

51. The learned advocate Shri Bobade also invited my attention to a decision reported in *ILR 54 Bombay 218* (Commissioner of Income-tax v. Bombay Trust

Corporation Ltd.). At page 223, section 42 of the Income-Tax Act has been considered. The observations made therein are as under:—

"The necessary notice of the intention of the Tax Officer to treat them as agents provided for has been served on them. All this being so, what says the section? They are "for all the purposes of the Act to be deemed to be such agents". Now one of the purposes of the Act is section 42. They are, therefore, to be "deemed to be" the agent who is chargeable to income-tax, are deemed to be the assessee—the assessee being in terms of section 2(2) defined as the person by whom income-tax is payable. Now when a person is "deemed to be" something, the only meaning possible is that whereas he is not in reality that something the Act of Parliament requires him to be treated as if he were."

Even in the decision of the Supreme Court reported in AIR 1958 S.C. 687, this question has been considered. The relevant observations made therein are as under:—

"Section 55-A(5) provides that any person who has given a notice of retirement under S. 55-A(2) is deemed not to be a contesting candidate for the purposes of S. 52. This is a deeming provision and creates a legal fiction. The effect of such a legal fiction however is that a position which otherwise would not obtain, is deemed to obtain under those circumstances.

This argument of Mr. Bobade is, therefore, well-founded. It is, therefore, evident, that, in view of the Explanation added to sub-section (3) of section 90 of the Act, the order of dismissing an election petition is only deemed to be an order of dismissing a petition under clause (a) of section 98 of the Act. It cannot be said to be an order under section 98(a); it is only deemed to be such an order. Clause (a) of sub-section (1) of section 99 cannot, therefore, apply. The Tribunal is, therefore, not bound to record findings of corrupt practice, as alleged by the learned advocate for the petitioner, Shri Jaywant. On the contrary, the scheme of the Act and the anomalous results that are likely to arise oblige the Tribunal not to record any such findings and dismiss the petition under section 90(3) of the Act, without recording any such findings.

52. The learned advocate Shri Jaywant invited my attention to a decision reported in AIR 1954 S.C. 202 (Raj Krishna Bose v. Binod Kanungo and others), and urged that the Tribunal was bound to record such findings as there has been a trial on the merits of the petition and evidence has been recorded. The observations made in the Supreme Court decision cited are as under:—

"It is essential that Election Tribunals should do their work in full. They are 'ad hoc' bodies to which remands cannot easily be made as in ordinary courts of law. Their duty does not end by declaring an election to be void or not. Where a number of allegations are made in the petition about corruption and illegal practices, undue influence and bribery it is the duty of the Tribunal not only to enquire into those allegations, but also to complete the enquiry by recording findings about those allegations and either condemn or clear the candidate of the charges made."

It will be pertinent to note that, in that decision, the Tribunal recorded its findings only regarding a few instances of corrupt practices. Several instances of corrupt practices were alleged. In the context of those circumstances, it has been observed by the Supreme Court that the Tribunal should record the findings on such instances of corrupt practice pleaded to avoid the remand in case, its opinion regarding commission of a particular corrupt practice is not accepted by the higher court.

In the present case, we are not concerned with the merits of the petition. There is something extraneous to the merits of the petition, which goes to the root of the matter. The moment, the Tribunal finds that there is no competent election petition, even if it is found at a late stage, after the entire inquiry has been made by the Tribunal, the Tribunal is bound to dismiss the petition on that ground. The scheme of the Act envisages that, in such an event the Tribunal cannot record its findings regarding the merits of the election petition. I therefore, reject this contention advanced on behalf of the petitioner and hold that this decision of the Supreme Court has no application to the facts of the present

53. An argument was advanced that an election petition cannot be dismissed under section 90(3) of the Act, after the tribunal has made an inquiry regarding the merits of the election petition. It will be pertinent to note that, in the present case, the respondent had given an application Ex. 23 to decide this issue No. 15-A, as a preliminary issue and record the evidence, only relating to that issue. As that application was given on the date, the case was fixed for hearing the evidence of the petitioner and the witnesses were summoned for giving evidence, I rejected that application for the expeditious disposal of the case. Further, evidence had also to be recorded for the decision of this preliminary issue. It was likely to be a duplication of evidence, as several documents, to be referred to, for the decision of this issue, were also referred to for the decision of other issues on merits. It is not the fault of the respondent. So far as another point for determination framed by me is concerned, the application was no doubt given at a very late stage. It was given after the evidence was already recorded and the arguments were to be heard. These circumstances, in my opinion, make no difference. The moment, the attention of the Tribunal is drawn to the non-compliance with the provisions of section 62 of the Act, and the Tribunal finds that there has been such non-compliance, the Tribunal can dismiss the election petition under section 90(3) of the Act, at any stage.

In a decision of the Supreme Court reported in AIR 1959 S.C. 837 (Om Prabha Jain v. Gain Chand and another), at page 840, the following observations have been made:—

"We were also referred to K. Kamaraja Nadar v. Kunju Thevar, AIR 1958 SC 687 and the connected cases. There an objection under S. 90(3) to an election petition similar to that which the appellant took in this case, was described as preliminary objection and it was said that if it was not decided first, the result would be a full fledged trial of the election petition involving examination of witnesses. It was therefore directed that the preliminary point should be decided first, as that might save costs and harassment to the parties by making it possible to avoid the trial of the other issues. We are unable to hold that this judgement supports the view that an order made under the powers given by S. 90(3) is not an order made at the conclusion of the trial; The direction to decide what has been called the preliminary objection first, does not lead to that conclusion. The Court was not concerned with any question as to when an order under the powers given by S. 90(3) could be made. It was indicating a procedure best suited to the interests of the parties on the facts of that case and not laying down any rule of law."

These observations made by the Supreme Court clearly indicate that even if the Tribunal has entered into the inquiry regarding the merits of the election petition, it can dismiss an election petition under Section 90(3) of the Act. In that decision also, such an issue was decided, after recording evidence, on all the issues.

In para 7 of this very decision of the Supreme Court, at page 838, the following instructive observations have been made, which are useful for our purposes. They are as under:—

"We see no justification for this view. An order made under the powers contained in S. 90(3) brings to an end the proceedings arising out of a petition; after it is made nothing more remains for the Election Tribunal to try or do in respect of that petition."

These observations also clearly indicate that the moment, the Tribunal comes to the conclusion that the petition is liable to be dismissed under section 90(3) of the Act, the proceeding ends and nothing remains to be done further, by the Tribunal.

54. In the decision reported in AIR 1959 SC 837, at pages 840 and 841, the following observations have been made:—

"The last argument advanced was based on S. 90. That section says that at the time of making an order under S. 98, the Tribunal shall also, where the petition contains a charge of a corrupt practice having been committed, make an order recording a finding whether or not such corrupt practice had been committed. It is said that if all orders of the Tribunal dismissing an election petition were held to be orders under S. 98, then, where a petition contained a charge of a corrupt practice and it was dismissed under the powers contained in S. 90(3), the Tribunal had further to make a finding as to whether

the commission of a corrupt practice had or had not been proved. It is contended that such a position would be senseless for it would prevent the Tribunal from every disposing of an election petition summarily on a preliminary ground. Therefore it is said that all orders dismissing an election petition are not orders under S. 98 and that supports the view that an order under S. 90(3) is not an order under S. 98. We are not impressed by this argument. If the proper construction of S. 99 is that an election petition cannot be dismissed on a preliminary point raised under S. 90(3), where it contains charges of corrupt practices having been committed, as the learned counsel for the appellant contends, that construction must have effect however senseless it may appear. Suppose an election is sought to be avoided on the grounds, that the returned candidate was not qualified or that one of the nomination papers had been improperly rejected and also on the ground of corrupt practices having been committed by the returned candidate, all of which are good grounds for setting aside an election under S. 100 of the Act. In such a case too, if the construction put upon S. 90 by the learned counsel for the appellant is right, the Tribunal cannot allow the petition on any one of the first two grounds, which it could have done after a very summary trial, but must proceed to decide the charges of corrupt practice alleged. This can be said to be equally senseless as where having dismissed a petition for non-compliance with S. 117 the Tribunal is made to record a finding on the corrupt practices alleged. On the other hand, if it is not senseless in one case, it is not senseless in the other. We do not therefore find much force in the argument based on an interpretation of S. 99 supposed to produce senseless results.

All this cannot, in any event, supply a reason for holding that an order which terminates the proceedings arising before an Election Tribunal is not an order passed at the conclusion of the trial, when it was made for the reasons mentioned in S. 90(3). We have earlier stated that the only duty of the Tribunal is to try and decide an election petition and the order on the preliminary point may dispose of that petition. We may also point out that under S. 99(1)(b), the Tribunal at the time of making an order under section 98 has also to make an order awarding costs and fixing the amount thereof. If an order authorised by S. 90(3) is not an order under S. 98 then, when dismissing a petition under S. 90(3), the Tribunal would appear to have no jurisdiction to make an order for costs. That can hardly have been intended.

We therefore think that an order dismissing a petition for the reasons mentioned in S. 90(3) is an order under S. 98 and is appealable under S. 116A....."

As the Legislature has added an Explanation to section 90(3), which I have already referred to above, the difficulty suggested before the Supreme Court, will not arise now. The order is only to be deemed to be an order under section 98 of the Act. It is not an order actually passed under section 98(a) of the Act. The provisions of section 99(1)(a) will not, therefore, be attracted in case the Election Tribunal finds that the petition is liable to be dismissed, under section 90(3) of the Act. It is, therefore, not necessary for this Tribunal to record any findings regarding the alleged corrupt practices, as suggested by the learned Advocate Shri Jaywant, for the petitioner.

55. I, therefore, decided the additional issue No. 15-A as under:—

The respondent has proved that the allegations made in para 6 of the election petition and Schedule II of the election petition, regarding the corrupt practice, are the allegations made against the candidate Haridas Damaji Awade or Awale. As Shri Haridas Awade or Awale is not joined as a respondent, the petition is liable to be dismissed under section 90(3) of the Act.

I further decided that the respondent has proved that the allegations made in para 6 of the election petition and the Schedule I of the election petition, are the allegations of corrupt practice made against Shri N. L. Belekar, the candidate. The election petition is, therefore, liable to be dismissed under section 90(3) of the Representation of the People Act, 1951, on account of the non-joinder of this candidate, Shri N. L. Belekar, as a party, to the election petition.

As the petition is liable to be dismissed under section 90(3) of the Act, on these two grounds, it is not necessary to decide the other issues regarding the merits of the petition, referred to above, as I have already held that this Tribunal is not competent to record such findings, after it finds that the petition is liable to be dismissed, under section 90(3) of the Act.

I may state that I would have liked to record the findings on other issues, as the evidence was led and I had heard the arguments at a great length. As I am obliged under the scheme of the Act to adopt the course that I have adopted, I have refrained from recording such findings.

I will be failing in my duty, if I do not take a note of the valuable assistance rendered to me, in the course of the trial, by the Advocates appearing on both the sides and the industry, they have put in.

As the election petition is being disposed of on two preliminary grounds, it will be proper and just to direct the petitioner to pay only Rs. 40/- by way of costs, inclusive of the advocates' fees in this petition, besides the costs ordered to be paid by the petitioner to the respondent in the interim applications. If the petitioner had adopted a straightforward course, after the application Ex. 23 was given by the respondent, he could have saved the labour of both the sides and of the Tribunal and could have saved the expenses incurred, to a certain extent.

ORDER

56. I dismiss the election petition under section 90(3) of the Representation of the People Act, 1951. The petitioner to pay Rs. 400/- by way of costs in this election petition, inclusive of the advocates' fees, besides the costs, he is ordered to pay to the respondent in the orders passed on certain interim applications. By an order Ex. 12, the petitioner was directed to pay Rs. 100/- to the respondent irrespective of the ultimate result of the election petition. On that condition, the amendment of the election petition was allowed. By an order Ex. 31, dismissing the amendment application Ex. 25, I had directed the petitioner to pay Rs. 50/- to the respondent, by way of costs, irrespective of the ultimate result of the election petition. The total amount of costs, that is payable by the petitioner to the respondent, thus, comes to Rs. 550/-.

(Sd.) J. M. SHETH, Member,
Election Tribunal, Nagpur.

The 10th December, 1959.

[No. 82/5/59/22799.]

New Delhi, the 4th January 1960

S.O. 60.--In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Order pronounced on the 14th December, 1959 by the Election Tribunal, Delhi.

Shri Brij Behari Vs. Mirza Ahmad Ali.

ORDER

In this election petition, the respondent has raised three preliminary objections. It is stated that there has been no proper presentation of the election petition; that no receipt has been enclosed by the petitioner with the petition showing the deposit of Rs. 1,000 in accordance with section 117 of the Representation of the People Act, 1951; and that the petition has not been properly verified. The above objections have given rise to the following preliminary issues:--

1. Has there been no proper presentation of the election petition? If so, what is the effect thereof?
2. Is the deposit of Rs. 1,000 as required by section 117 of the Representation of the People Act, invalid? If so, what is the effect thereof?
3. Is the verification of the petition not in accordance with law? If so, what is the effect thereof?

I have heard the learned counsel for the parties and now proceed to give my findings on the different issues.

Issue No. 1:

2. According to clause (a) to sub-section (2) of section 81 of the Representation of the People Act, an election petition shall be deemed to have been presented to the Election Commission when it is delivered to the Secretary to the Commission or to such other officer as may be appointed by the Election Commission in this behalf. The endorsement on the present election petition shows that it was presented to Shri Din Dayal, Under Secretary, Election Commission, India. The contention raised on behalf of the respondent's learned counsel is that Shri Din Dayal was not duly authorised to receive the election petition. In my opinion, this contention is not well-founded. Notification S. R. O. 1988 dated 9th September, 1955 published in the Gazette of India dated 17th September, 1955 shows that the Election Commission, in exercise of the powers conferred by clause (a) of sub-section (2) of section 81 of the Representation of the People Act, appointed Shri Din Dayal, Under Secretary, Election Commission as the Officer who might receive election petitions presented in accordance with the Act. In view of this notification, I have no doubt in my mind that Shri Din Dayal was duly authorised to receive the present election petition.

3. It has also been argued by the learned counsel for the respondent that after the issue of the above notification, there have been amendments in the Representation of the People Act. In my opinion, the amendments, in the aforesaid Act, in no way, affect the above mentioned notification. The law does not contemplate that notifications issued under an Act would lapse on each subsequent amendment in that Act. I, therefore, hold that the amendments in the Representation of the People Act do not, in any way, affect the above mentioned notification.

4. Issue No. 1 is decided against the respondent.

Issue No. 2:

5. Section 117 of the Representation of the People Act reads as under:—

"Deposit of security.—The petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit of one thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for the costs of the petition."

Copy of the Treasury receipt of the deposit of Rs. 1,000 has been received from the Election Commission along with the election petition. The copy has been certified to be correct by Shri Din Dayal, Under Secretary of the Election Commission. According to the copy, Rs. 1,000 were deposited by the petitioner "in favour of the Secretary to the Election Commission, India New Delhi as security for the costs of the election petition—Shri Brij Behari Vs. Mirza Ahmad Ali in respect of the election to the Rajya Sabha for the Union Territory of Delhi Constituency." The copy also shows that the State Bank of India received Rs. 1,000 on 4th October, 1958. It is urged on behalf of the respondent that the amount should have been deposited either in a Government Treasury or in the Reserve Bank of India and that the deposit in the State Bank of India was not in accordance with the law. In my opinion, this contention is devoid of force. The copy shows that it was the Treasury Officer of Delhi, who issued an order to the effect: "Receive and grant receipt". The deposit in the State Bank of India was thus in accordance with the order of the Treasury Officer. It is well-known that the Treasury Officer himself does not receive the payments on behalf of the Treasury, but directs payments to be made in the State Bank of India. The State Bank of India acts as the agent of the Treasury. The deposit in the State Bank of India in accordance with the order of the Treasury is thus tantamount to deposit in the Treasury.

6. Another contention, which has been raised by the learned counsel for the respondent, is that the original receipt with regard to the deposit of Rs. 1,000 was not filed along with the election petition. In this respect, I find that there is a certified copy of an acknowledgement sent by the Election Commission to the petitioner. In this acknowledgement, it is distinctly stated by Shri Din Dayal that the above election petition was received along with the Treasury receipt of Rs. 1,000. The certified copy of the aforesaid receipt was also sent along with the election petition by the Election Commission to the Tribunal. There is no need for me to show that the original treasury receipt was not enclosed

7. In view of the above, I decide issue No. 2 against the respondent.

Issue No. 3:

8. The learned counsel for the respondent has argued that the petitioner in his verification has stated that paragraphs 1 to 6 are correct and true to the best of his knowledge and belief and the contents of paragraphs 7 to 10 are legal and correct to his belief. It is urged that the petitioner has not specified as to which paragraphs out of 1 to 6 are true and correct to the best of his knowledge and which paragraphs are true and correct to the best of his belief. The learned counsel for the petitioner contends that part of the averments in paragraphs 1 to 6 of the petition are true to the best of the petitioner's knowledge and part of them true to the best of his belief, and for that reason the petitioner referred to both his knowledge and belief, while verifying paragraphs 1 to 6. In my opinion, there is force in the above contention.

9. Assuming that there was some defect in verification, it could be only an irregularity in procedure and would be no ground for rejecting the petition. It has also been urged that there is no verification of para 11 of the petition, wherein there is mention of deposit of the sum of Rs. 1,000 as security for the costs of the petition. It appears that the election petition was verified on 2nd October, 1958, while the deposit of Rs. 1,000 was made on 4th October, 1958. As the amount had not so far been deposited till the time of verification of the petition, para 11 of the petition was not verified to be correct. The petitioner subsequently deposited Rs. 1,000 in the Treasury and this fact is fully borne out by the material on the record apart from the averments in the petition. In the circumstances, the omission of the petitioner to refer to para 11 in the verification, in my opinion, would not affect the maintainability of the petition. I, accordingly, decide Issue No. 3 against the respondent.

10. As a result of the above, I over-rule the preliminary objections raised by the respondent.

Announced:

The 18th July, 1959.

Sd./- HANS RAJ KHANNA,
Member, Election Tribunal, Delhi.

IN THE COURT OF SHRI HANS RAJ KHANNA, MEMBER, ELECTION TRIBUNAL, DELHI

ELECTION PETITION No. 1 OF 1958.

Shri Brij Behari Vs. Mirza Ahmad Ali.

JUDGEMENT:

By-election to the Rajya Sabha to fill the vacancy caused by the death of Begum Kidwai took place in September, 1958. The by-election was for the seat allotted to the Union Territory of Delhi from the Electoral College constituted for that Territory. Shri Brij Behari petitioner was a Candidate in that election and he filed his nomination paper (Ext. P/1) before the Returning Officer Shri Hans Raj who was then Judicial Secretary of Delhi Administration, on 1st September, 1958. The nomination paper was signed by Shri Sri Krishan as a proposer of the petitioner. The serial number of the proposer was mentioned in the Electoral Roll as "6440", Vol. VII, Chandni Chowk Constituency." Scrutiny took place on 3rd September, 1958. At the time of the scrutiny, an objection was taken to the validity of the nomination paper (Ext. P/1) of the petitioner. The Returning Officer upheld the objection and passed the following order while rejecting the nomination paper:—

Objection—The proposer has given his serial number 6440 as in the Electoral Roll of the Parliamentary Constituency and not his number of the Electoral College and that his identity is not established as a member of the Electoral College.

Decision.—Objection accepted. Nomination rejected. Proposer is absent.

2 Mirza Ahmad Ali respondent was declared elected as a result of the poll. The petitioner thereupon filed the present election petition challenging the election of the respondent on the ground of improper rejection of his nomination

paper. According to the petitioner, his proposer Shri Sri Krishan was a Member of the Electoral College and his serial number was 16. It is stated that the petitioner pointed out the above facts to the Returning Officer and requested the latter to give him time for half an hour, within which time his proposer could come and any doubt about his identity could be removed. The Returning Officer, however, refused to give time and passed the order rejecting the nomination. It is further stated that there was no defect of a substantial character in the nomination paper of the petitioner.

3. The respondent at first filed some preliminary objections regarding the verification and presentation of the petition and about the validity of the deposit of Rs. 1,000 under section 117 of the Representation of the People Act. Those objections gave rise to three preliminary issues. Those issues were decided in favour of the petitioner, as per order dated 18th July, 1959.

4. The respondent in his written statement on merits denied the allegations of the petitioner about his having pointed out to the Returning Officer that Shri Sri Krishan was a Member of the Electoral College and about his serial number being 16. It was also denied that the petitioner had requested the Returning Officer to give him time. According to the respondent, the Returning Officer was justified in rejecting the nomination of the petitioner. The defects in the nomination paper of the petitioner, it is stated, were of a substantial character. An objection was also taken in the written statement that the petition was vague inasmuch as it did not indicate the election to which reference was made.

5. The following issues were framed in the case:—

1. Whether the nomination paper of the petitioner was improperly rejected? If so, what is the effect thereof?
2. Whether the election petition is vague on the ground of not giving full particulars of the election, which is sought to be challenged?
3. Relief.

The petitioner in support of his petition has examined his proposer (Shri Sri Krishan PW1), Shri Hans Raj, Returning Officer (PW2) and Shri Darogha Mal, Advocate (PW3) besides himself coming into the witness-box as PW 4. The respondent in rebuttal has examined Shri Lal Chand Adwani (RW1), Shri Shakil Ahmad (RW2), Shri Harbans Singh (RW3) and Shri Dewan Singh (RW4) besides himself coming into the witness-box. I have heard the learned counsel for the parties and now proceed to give my findings on the issues framed.

Issue No. 1.

6. Before dealing with the question of law, I may dispose of some questions of facts which are involved in the case. According to the petitioner, his proposer Shri Sri Krishan was qualified to propose him. In this respect, I find that Ext. P/2 is a certified copy of the entry relating to Shri Sri Krishan in the list of Members of the Electoral Roll for the Union Territory of Delhi. According to this list, Shri Sri Krishan's name is at serial number 16 of the list of members constituting the Electoral College. I, therefore, find that Shri Sri Krishan was qualified to propose the name of the petitioner.

7. There is a difference between the parties with regard to what transpired at the time of scrutiny. In this respect, Shri Hans Raj, the Returning Officer has deposed that at the time of scrutiny, an objection was taken to the validity of nomination paper (Ext. P/1) of the petitioner by most of the other contesting candidates. Shri Hans Raj recorded the objection on the nomination paper and passed the order rejecting the nomination. Shri Hans Raj has further deposed that the proposer was absent at the time of scrutiny. The petitioner asked for time at that time to go and bring the proposer, but Shri Hans Raj did not accede to this request of the petitioner. I see no reason whatsoever not to accept the above statement of Shri Hans Raj. According to the petitioner, at the time of the scrutiny when objection was raised with regard to his nomination paper, the Returning Officer consulted the Electoral Roll. Both the petitioner and his witness Shri Darogha Mal (P.W. 3) have deposed about it. In this respect I find that Shri Hans Raj was asked whether he had the Electoral College list with him at the time of scrutiny and he replied in the affirmative. No question, however, was asked from Shri Hans Raj whether the Electoral
at time and there is no

explanation on the record for this omission Shri Hans Raj being the Returning Officer was the best person to depose on the point as to whether he consulted the Electoral Roll at the time of scrutiny. The failure of the petitioner to ask him any question in this respect would raise an adverse presumption against him. I would, therefore, hold that it has not been proved that the Electoral College List was consulted at the time of scrutiny.

8 The respondent has produced evidence to show that the request, at the time of scrutiny on behalf of the petitioner for time to produce his proposer Shri Sri Krishan, was made after the Returning Officer had announced the order rejecting the nomination paper of the petitioner. The evidence in this respect consists of the testimony of Shri Lal Chand Adwani (RW1), Shri Shakil Ahmad (RW2) and Mirza Ahmad Ali respondent (RW5). According to RW1 Shri Adwani it was he and one Hori Lal, who objected to the nomination paper of the petitioner. In this connection, I find that Shri Hans Raj, Returning Officer, has stated that the request by the petitioner for time to go and bring his proposer was made at the time of scrutiny. The above statement of Shri Hans Raj was not challenged and there was no suggestion in cross examination that the above request was made after he had announced his order rejecting the nomination paper of the petitioner. It may also be observed that in his written statement, the respondent, while dealing with the allegation of the petitioner about the request at the time of scrutiny to produce Shri Sri Krishan, merely stated that it was wrong that the petitioner had requested the Returning Officer to give him time for half an hour within which time his proposer would come and any doubt about his identity could be removed. There was no averment in the written statement that the request was made after the rejection of the nomination paper. In the circumstances, I am of the view that the evidence produced on behalf of the respondent that the request to produce Shri Sri Krishan was made after the rejection of the petitioner's nomination paper smacks of afterthought.

9 According to Shri Sri Krishan (PW1) he and the petitioner presented the nomination paper before the Returning Officer. There is no other evidence, not even that of the petitioner to corroborate the above statement of Shri Sri Krishan. Shri Hans Raj, Returning Officer has deposed that Shri Sri Krishan was not present at the time of the presentation of the nomination paper. I see no cogent ground to disbelieve the statement of Shri Hans Raj, who is altogether a disinterested witness.

10 The learned counsel for the petitioner has argued that there was no defect in the nomination paper of the petitioner. It is pointed out that it was sufficient compliance with law to mention the serial number 6440 of Shri Sri Krishan in the Electoral Roll of Delhi for election of Members to the Lok Sabha, Chandni Chowk Constituency. Reference in this connection has been made to Ext P/3, which is a copy of the entry in the Electoral Roll of that Constituency and which shows that Shri Sri Krishan's name was at serial number 6440 in that Electoral Roll. In my opinion, there is no force in the above contention. The nomination paper, which was filed in the present case, was in Form 2D. Rule 4 of the People (Conduct of Election and Election Petitions) Rules 1956 provides that every nomination paper presented under sub-sections (1) of section 33 shall be presented in such one of the forms 2A to 2F, as may be appropriate. The appropriate form for election to the Council of State is 2D. The requirement in respect of serial number of proposer in column 2 of the form reads as under —

"Serial number of the proposer in the list mention under section 152".

Section 152 of the Representation of the People Act reads as under —

'List of members of the State Legislative Assemblies and electoral colleges to be maintained by the returning officers concerned

- (1) The returning officer for an election by the elected members of the Legislative Assembly of a State to fill a seat or seats in the Council of States or for an election by the members of the Legislative Assembly of a State to fill a seat or seats in the Legislative Council of the State shall for the purposes of such election, maintain in his office in the prescribed manner and form a list of elected members or a list of members, as the case may be, of that Legislative Assembly
- (2) The returning officer for an election by the members of the electoral college for a Union territory to fill a seat or seats in the Council of States shall, for the purposes of such election, maintain in his

11

office in the prescribed manner and form a list of members of that electoral college.

- (3) Copies of the lists referred to in sub-sections (1) and (2) shall be made available for sale."

Sub-section (1) of section 152 does not apply to the present case, which is obviously governed by sub-section (2). I have consequently no doubt that the serial number which was required to be filled in by the proposer of the petitioner was serial number 16 in the Electoral College List and not No. 6440 of Chandni Chowk Constituency. As this was not done, the nomination paper of the petitioner should be held to be completed not in the prescribed form, as required by sub-section (1) of section 33 of the Representation of the People Act. I hold accordingly,

Sub-section (2) of section 36 of the R.P. Act, which section deals with scrutiny of nomination papers, reads as under:—

"The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination, and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:—

- (a) that the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:—

Articles 84, 102, 173 and 191 and Part II of this Act or

- (b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or

- (c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

As there was a failure to comply with the provisions of section 33 of the Representation of the People Act, while filling in the nomination paper of the petitioner, his nomination was liable to be rejected under clause (b) of the above sub-section. The learned counsel for the petitioner has relied upon sub-section (4) of section 36 of the Representation of the People Act which reads as under:—

"The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character."

It is urged that the defect in the nomination paper of the petitioner was not of a substantial character and as such, the Returning Officer should not have rejected it. In this respect, I find that the question as to whether the requirement of mentioning the Electoral Roll Number of the proposer in the nomination paper should be regarded as a matter of substance or not, was considered in a case reported in 1958, Punjab Law Reporter, page 482, the head note of which reads as under:—

"One of the requirements for a valid nomination is that the candidature must be proposed by an elector of the constituency. The full name and the electoral roll number of the proposer are obviously required to be mentioned in the nomination form in order to enable the Returning Officer to satisfy himself that the proposer is actually an elector of the constituency. The requirement of mentioning the name and the electoral roll number of the proposer in the nomination form must, therefore, be regarded as a matter of substance.

The proviso to sub-section (4) of section 33 of the Representation of the People Act, makes it clear that the correspondence between the names and electoral roll numbers as entered in the nomination paper with those entered in the electoral rolls need not be meticulously exact and any clerical or technical error would be permitted to be corrected and any clerical or printing error shall be overlooked. All the same there should not be so much divergence between the entries in the nomination paper and the relevant entries in the electoral rolls that the Returning Officer is left in doubt as to whether they relate to the same person. If there is any such doubt and it is not resolved at the scrutiny stage, the Returning Officer has no alternative but to reject the nomination."

11. Another authority, which has a direct bearing on the case is that reported in XII E.L.R. page 216, decided by the Rajasthan High Court (Equivalent to A.I.R. 1957 Rajasthan, 189). In that case, the Electoral Roll of a constituency prepared in 1951 was superseded by another Electoral Roll, which was prepared in 1952. In a nomination paper filed in 1953 after the First Electoral Roll had ceased to be in force, against column 8 (which related to the serial number of the candidate in the Electoral Roll of the Constituency, in which his name was included), the serial number of the candidate as it appeared in the Electoral Roll of 1951 was given and not that of 1952. A certified copy of the Roll of 1952 was produced at the time of the scrutiny of the nomination. The Returning Officer refused to allow the serial number to be corrected at the time of scrutiny and rejected the nomination on the ground that it did not comply with section 33(1) of the Representation of the People Act. It was held by the High Court reversing the majority judgment of the Tribunal that giving the serial number of the candidate in the superseded roll and not giving the number in the Roll, which was in force at the time of the nomination, was equivalent to giving no number at all and amounted to a substantial non-compliance with the provisions of section 33. The mistake, it was held, could not be rectified.

12. The relevant head note of a case reported in AIR 1959 S.C. page 93 reads as under:—

"Whenever the statute requires a particular act to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence it would be difficult to accept the argument that the failure to comply with the said requirement should lead to any other consequence. There is no doubt that the essential object of the scrutiny of nomination papers is that the returning officer should be satisfied that the candidate who is not an elector in the constituency in question, is in fact an elector of a different constituency. The satisfaction of the returning officer is thus the matter of substance in these proceedings; section 33(5) requires the candidate to supply the prescribed copy and s. 36(2)(b) provides that on his failure to comply with the said requirement his nomination paper is liable to be rejected. In other words, this is a case where the statute requires the candidate to produce the prescribed evidence and provides a penalty for his failure to do so. If the candidate fails to produce the relevant copy, the consequence prescribed by s. 36(2)(b) must inevitably follow.

Where the statute requires specific facts to be proved in a specific way and it also provides for the consequences of non-compliance with the said requirement it would be difficult to resist the application of the penalty clause on the ground that such an application is based on a technical approach. Indeed it is precisely this approach which has to be adopted."

The rejection of the nomination paper in the above cited case was due to the failure of the candidate, who was not an elector in the constituency, in which he was seeking the election to produce the electoral roll or a copy of the relevant entry in the electoral roll of another constituency, wherein his name was shown as an elector. It was held that the nomination paper had been validly rejected. Their Lordships in the above cited case relied upon the observations of the Supreme Court in an earlier case reported in AIR 1954 S.C. page 210, which are to the following effect:—

"An election contest is not an action at law or a suit in equity, but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power."

Another observation of the earlier case, which was relied upon was to the following effect:—

"It is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law."

13. Reliance was also placed in the case 1959 S.C. Page 93 on an earlier case reported in A.I.R. 1954, S.C. Page 510, wherein it was observed that when the law enjoins the observance of a particular formality, it cannot be disregarded

and the substance of the thing must be there. In this Supreme Court case reported in 1954 S.C. 510 it was held that where a nomination is proposed or seconded by a person who is illiterate and is unable to write his name, the mark which he puts instead of his signatures must be duly attested by an officer in the prescribed manner and that want of due attestation in such a case was not technical defect of unsubstantial nature.

14. The relevant head note of a case reported in AIR 1954 Madras, page 730 reads as under:—

"The failure to fill up the particulars as to the name of the constituency in the electoral roll of which the petitioner's name was included and his serial number in that electoral roll is not a technical defect. It is a substantial defect which the Returning Officer had no jurisdiction to overlook. Without these particulars, the Returning Officer could not decide whether a candidate is or is not qualified. The omission to give the particulars as to the electoral roll and the serial number therein is a good ground for the rejection of the nomination paper by the Returning Officer under s. 36(2)(d)."

15. The learned counsel for the petitioner has relied on a case reported in 1959 S.C. 422, wherein it was held that the inquiry before the Tribunal must embrace all the matters as to qualification and disqualification mentioned in section 36(2) of the Representation of the People Act and that it cannot be limited to the particular ground of disqualification, which was taken before the Returning Officer. Perusal of the facts of the cited case would go to show that an objection was raised with regard to the nomination paper of one Arunachalam on the ground that he was the headmaster of a Government-aided school and, as such, was disqualified under section 7, clauses (d) and (e) of the Representation of the People Act, as holding an office of profit under the Government. The objection was upheld and the nomination paper was rejected. Subsequently an election petition was filed to challenge the election of the successful candidate on the ground that the nomination paper of Arunachalam had been improperly rejected, because he had ceased to be headmaster at the time of his nomination. The successful candidate in his written statement pleaded that Arunachalam was not qualified to be chosen not merely on the ground put forward before the Returning Officer, but also on the ground that he was interested as a partner in a contract for the execution of work for the Government. Question consequently arose whether the Tribunal was competent to enquire into the ground of disqualification of Arunachalam which had not been put before the Returning Officer. It was held that the Tribunal could go into those grounds also. The reproduction of the facts of the cited case thus goes to show that the question for adjudication in that case was with regard to the qualification or disqualification of Arunachalam to stand as a candidate. There was no dispute in that case and consequently no finding on the point as to what amounts to a defect of substantial character in a nomination paper. As such, the cited authority is of not much assistance to the petitioner.

16. Another case cited on behalf of the petitioner is that reported in AIR 1956 S.C., page 140, wherein it was observed that the tendency of the courts towards technicality is to be deprecated and that it is the substance that counts and must take precedence over mere form. The above was a case under C.P. and Berar Municipalities Act. It was held that the disclosure of a candidate's occupation in a nomination paper would not necessarily reveal that he holds office of profit. It was further held that the omission of a candidate to mention his occupation in the nomination paper would not invalidate his nomination. It was also observed: "We are clear that this part of the form (relating to the requirement about the mention of the occupation) is only directly and is part of the description of the candidate. It does not go to the root of the matter so long as there is enough material in the paper to enable him to be identified beyond doubt." The requirement with regard to mentioning the electoral roll number does not in my opinion, stand on the same footing as that with regard to giving the occupation of the candidate. It may also be stated that the above case was decided in the context of the C.P. & Berar Municipalities Act and the rules framed thereunder.

17. Another case cited by the learned counsel for the petitioner is reported in VII E.L.R. page 338. This was a case decided on 29th June, 1953, by a Tribunal, of which I was a member. The relevant head note of this case reads as under:—

"Where the electoral roll number of a candidate was given in a nomination paper as No. 342 in village A, ignorance of the fact that the

entry relating to this number had been struck off by a supplementary list, but at the time of the scrutiny of nomination, the candidate pointed out that he was also registered as a voter in village B against serial No. 3241, but the Returning Officer rejected the nomination on the ground that the candidate had given an electoral roll number which did not exist, without making any summary inquiry whether the candidate was entered as a voter as Serial No. 3241 in village B.

Held, that there was only a bonafide mistake in entering the serial number of the candidate in the electoral roll, as the candidate was not aware of the fact that entry No. 324 had been struck off by a supplementary list, and as there was no doubt about the identity of the candidate, the Returning Officer was bound in the circumstances to make an inquiry into the allegation of the candidate that he was entered as a voter against Serial No. 3241 of village B and to come to a decision on the point and the rejection of the nomination was in the circumstances of the case improper."

It will be observed that in the above cited case the correct serial number of the candidate was brought to the notice of the Returning Officer at the time of the scrutiny. This thing, however, has not been proved satisfactorily in the present case, as held by me above. There are observations in the cited case which no doubt help the petitioner. The correctness of the view taken therein has been considerably shaken by that taken in the later authorities reported in 1958 P.L.R., page 482, A.I.R. 1957 Rajasthan, page 189, 1959 S.C. page 93 and AIR 1954, S.C. page 510.

18. Another case relied upon on behalf of the petitioner is that reported in AIR 1958 Kerala, page 154 wherein it was held that the giving of a wrong part number of the electoral roll in the nomination paper would not amount to a defect of a substantial nature, if the Returning Officer is able to satisfy himself by reference to correct part of the roll, which was pointed out to him, that the proposer was an elector of the constituency. There are no doubt some observations in the above case which support the petitioner. I must, however, follow the view taken in the case decided later by the Supreme Court and reported in AIR 1959 S.C. page 93 and also by the Punjab High Court in 1959 P.L.R., page 482.

19. It has been also argued on behalf of the petitioner that a duty was cast on the Returning Officer under sub-section (1) of section 33 of the Representation of People Act to satisfy himself at the time of the presentation of the nomination paper that the name and electoral roll numbers of the candidate and the proposer as entered in the nomination paper were the same as those entered in the electoral rolls. It is urged that the returning officer did not perform this duty and that if the needful had been done at that time, the necessary correction would have been made and the nomination of the petitioner would not have been rejected on the date of scrutiny. In this respect, I am of the view that the failure of the Returning Officer to satisfy himself in terms of sub-section (4) of section 33 did not absolve the petitioner and his proposer from giving the correct electoral roll number in the nomination paper. Primarily it was for the petitioner and his proposer to see that the correct serial number of the proposer was given in the nomination paper. Necessary attention to that was not paid at the proper time and consequently the petitioner has to suffer the penalty of the rejection of his nomination paper because of the provisions of sub-section (2) of section 36 of the Representation of the People Act.

20. The learned counsel for the petitioner has also laid stress on the fact that the returning officer did not grant the request of the petitioner to give him half an hour to call his proposer Shri Sri Krishan. In this respect, I am of the view that the refusal of the returning officer to adjourn the proceedings would not have made any material difference so far as the defect in the nomination paper of the petitioner was concerned. The calling of Shri Sri Krishan would have only proved his identity. It, however, could not have led to the rectification of the defect in the nomination paper. I have not been referred to any law which permits rectification of the nomination paper at the time of scrutiny. On the contrary, I find that it has been laid down in 1954 S.C. page 510 that the returning officer has no power to allow rectification of defects in the nomination whether they are substantial or unsubstantial, at the time of scrutiny. The same view has been taken by the Rajasthan High Court in XII E.L.R. page 216.

21. After giving the matter my earnest consideration, I am of the view that the rejection of the nomination paper of the petitioner cannot be deemed to be improper. I, accordingly, decide Issue No. 1 against the petitioner.

Issue No. 2.

22. The learned counsel for the respondent has not pressed this issue. Perusal of the petition shows that it has been filed to challenge the election of the respondent to the Rajya Sabha for the seat allotted to the Union Territory of Delhi from the Electoral College constituted for that territory. I, accordingly, decide Issue No. 2 against the respondent.

23. As a result of my finding on Issue No. 1, the petition fails and is dismissed. Considering all the facts, I leave the parties to bear their own costs. Counsel's fee Rs. 200.

Announced

The December 14, 1959.

(Sd.) HANS RAJ KHANNA,
Member, Election Tribunal, Delhi.

[No. 82/10/58.]

By Order,

C. B. LAL, Under Secy.

New Delhi, the 4th January 1960

S.O. 61.—In exercise of the powers conferred by sub-section (1) of section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission in consultation with the Tripura Administration, hereby nominates Shri T. P. Choudhury, Legal Remembrancer and *Ex-Officio* Deputy Secretary to the Tripura Administration, as the Chief Electoral Officer for the Union Territory of Tripura with effect from the 18th November, 1959, and until further orders *vice* Shri G. K. Misra.

[No. 154/17/58/275.]

By Order,

S. C. ROY, Secy.

MINISTRY OF HOME AFFAIRS

New Delhi, the 31st December 1959

S.O. 62.—In exercise of the powers conferred by section 17 of the Indian Arms Act, 1878 (1 of 1878), the Central Government hereby makes the following further amendment to the Indian Arms Rules, 1951, namely:—

In sub-rule (1) of rule 41 of the said rules in the last paragraph, for the words "Andhra Pradesh and Orissa", the words "Andhra Pradesh and Kerala" shall be substituted.

[No. 15/12/59-Police.IV.]

C. P. S. MENON, Dy. Secy.

New Delhi, the 2nd January 1960

S.O. 63.—In exercise of the powers conferred by clause (1) of article 239 of the Constitution and all other powers enabling him in that behalf, the President hereby directs that all orders and instruments made and executed in the name of

the Chief Commissioner of the Andaman and Nicobar Islands shall be authenticated by the signature of—

- (a) the Chief Conservator of Forests; or
- (b) the Secretary and Financial Adviser to the Chief Commissioner; or
- (c) the Principal Engineering Officer; or
- (d) the Development Officer; or
- (e) an Assistant Secretary to the Chief Commissioner.

[No. F. 22/11/59-ANL.]

A. D. SAMANT, Under Secy.

MINISTRY OF FINANCE

(Department of Expenditure)

New Delhi, the 28th December 1959

S O. 64.—In pursuance of clause (3) of article 77 of the Constitution and of all other powers enabling him in this behalf, the President is pleased to make the following amendment in the Delegation of Financial Powers Rules, 1958, namely:—

Amendment No. 30

In Schedule 1 to the Rules, on page 9, under “N—Ministry of Rehabilitation” insert the following:—

“7. The Chief Settlement Commissioner, New Delhi.”

(This amendment takes effect from 7th December 1959.)

[No. F. 12(67)-E.II(A)/59.]

R. R. SAVOOR, Dy. Secy.

(Department of Economic Affairs)

New Delhi, the 31st December, 1959

S.O. 69.—Statement of the Affairs of the Reserve Bank of India, as on the 25th December 1959.

BANKING DEPARTMENT

Liabilities	Rs.	Assets	Rs.
Capital paid up	5,00,00,000	Notes	11,00,86,000
Reserve Fund	80,00,00,000	Rupee Coin	2,44,000
National Agricultural Credit (Long-term Operations) Fund	30,00,00,000	Subsidiary Coin	3,80,000
National Agricultural Credit (Stabilisation) Fund	4,00,00,000	Bills Purchased and Discounted :—	
Deposits:—		(a) Internal . . . . .	..
(a) Government		(b) External . . . . .	..
(1) Central Government	58,87,33,000	(c) Government Treasury Bills	23,32,10,000
(2) Other Governments	24,64,94,000	Balances held abroad*	52,13,17,000
(b) Banks	73,01,53,000	Loans and Advances to Governments	19,23,71,000
(c) Others	116,35,23,000	Other Loans and Advances†	92,36,28,000
Bills Payable	21,31,93,000	Investments	236,82,71,000
Other Liabilities	28,45,32,000	Other Assets	11,71,21,000
Rupees	441,66,28,000	Rupees	441,66,28,000

*Includes Cash & Short-term Securities.

†The item 'Other Loans and Advances' includes Rs. 11,50,000/- advanced to scheduled banks against usance bills under Section 17(4)(c) of the Reserve Bank of India Act.

Dated the 30th day of December 1959.

An Account pursuant to the Reserve Bank of India Act, 1934, for the week ended the 25th day of December, 1959.

ISSUE DEPARTMENT

Liabilities	Rs.	Rs.	Assets	Rs.	Rs.
Notes held in the Banking Department	11,00,86,000		A. Gold Coin and Bullion :—		
Notes in circulation	1730,11,45,000		(a) Held in India	117,76,03,000	
Total Notes issued		1741,12,31,000	(b) Held outside India . . . . .	..
			Foreign Securities	163,00,89,000	
			TOTAL OF A		280,76,92,000
			B. Rupee Coin		132,92,55,000
			Government of India Rupee Securities		1327,42,84,000
			Internal Bills of Exchange and other		..
			commercial paper . . . . .		..
TOTAL LIABILITIES		1741,12,31,000	TOTAL ASSETS		1741,12,31,000

Dated the 30th day of December, 1959.

H. V. R. IENGAR,

Governor.

[No. F. 3(2)-BC/59.]

A. BAKSI, Jt. Secy.

CENTRAL BOARD OF REVENUE**CUSTOMS***New Delhi, the 2nd January, 1960.*

S.O. 66.—In exercise of the powers conferred by Section 11 of the Sea Customs Act, 1878 (8 of 1878), as in force in India and as applied to the State of Pondicherry, the Central Board of Revenue hereby makes the following further amendments in its Notification No. 27-Customs, dated the 12th July, 1930, namely:—

In the schedule annexed to the said notification, for the existing entries in columns 3 to 6 relating to the wharves Nos. 13, 18, 21, 24 and 33 in column 2, the following entries shall be substituted respectively namely:—

3	4	5	6
Government	R. C. C. Wharf of 82'-5" long and 28' wide on the North bank of commercial canal opposite to Shri K. Basvi-reddi Godowns.	General cargoes including ores.	Landing and shipping.
Government	R. C. C. Wharf of 82'-5" long and 28' wide on the bank of commercial canal opposite to Coconada chamber of Commerce.	General cargoes including ores.	Landing and shipping.
Government	R. C. C. Wharf of 82'-5" long 28' wide on the bank of Commercial canal opposite to godowns pydolis.	General cargoes including ores.	Landing and shipping
Government	R. C. C. Wharf of 82'-5" long 28' wide on the north bank of commercial canal opposite to M/s Ripley Co's Godowns.	General cargoes including ores.	Landing and shipping.
Government	R. C. C. Wharf of 82'-5" long and 28' wide on the southern bank of Commercial canal near Godavari Baling Press on Jagawanaikpur side.	General cargoes including ores.	Landing and shipping.

[No. 2 F. No. 52/2/59-LC.II.]

S.O. 67.—In exercise of the powers conferred by section 9 of the Sea Customs Act, 1878 (8 of 1878), as in force in India and as applied to the State of Pondicherry, the Central Board of Revenue hereby makes the following further amendment in its notification No. 66-Customs, dated the 22nd August, 1953, namely:—

In the said notification, in the second rule, for the word "Dehra Dun" the word "Saharanpur" shall be substituted.

[No. 3 F. No. 60/13/59-LC.II.]

M. A. RANGASWAMY, Secy.

CENTRAL EXCISE COLLECTORATE, DELHI**CENTRAL EXCISE***New Delhi, the 29th December 1959*

S. O. 68.—In exercise of the powers conferred on me under Rule 233 of Central Excise Rules, 1944, I direct that all licensed manufacturers of Rayon or Artsilk and Cotton Fabrics in powerloom factories (without spinning plants) and paying duty under special procedure as provided in Section E III of Chapter V of the Central Excise Manual, shall paint distinct number on each loom installed in the factory in serial order, irrespective of whether the loom is employed on the manufacture of any excisable fabrics or not and shall maintain a disposition chart for each such premises in the enclosed form 8A.

2. Every manufacturer shall make an entry in the loom disposition chart in form 'A' immediately on the commencement of a shift within thirty minutes of starting of any loom on any variety of fabrics at subsequent stage during a shift.

3. The variety of the fabrics manufactured shall be indicated in the powerlooms disposition chart by using the following abbreviations. (All the entries in the loom disposition chart shall be made in ink only).

- | | | | | |
|-------------------------------|---|---|---|------|
| (1) Rayon or Art Silk Fabrics | . | . | . | 'AS' |
| (2) Cotton Fabrics | . | . | . | 'CF' |
| (3) Exempted Fabrics | . | . | . | 'X' |
| (4) Non excisable fabrics | . | . | . | 'NE' |
| (5) Idle Looms | . | . | . | 'I' |

4. In cases in which a manufacturer produces both artsilk and Cotton fabrics, it is not necessary to maintain separate looms disposition charts for the two commodities.

5. At the end of each shift the total no of looms employed for each variety of fabrics and the number of looms which remain idle shall be shown in the columns meant for the purpose in the loom disposition chart. These charts shall be kept in the weaving shed and shall be made available as and when demanded by any officer of this department.

6. Where the manufacturers are maintaining their own account giving the information as per the loom disposition chart, it is not necessary to maintain this chart in addition. For this purpose, such manufacturers shall obtain specific exemption from the Superintendent of Central Excise having jurisdiction over the factory.

7. Notification S.R.O. 2214 dated the 27th June, 1957 published in part II Section 3 of the Gazette of India dated the 6th July, 1957/Asadha 15, 1879, is hereby cancelled.

FORM "A"

POWER LOOMS DISPOSITION CHART

MONTH

Name of the manufacturer.....L. 4 No.....Premises No.....

S. No. of looms	No of shift	Dates				Upto the end of month (Including Sundays and Holidays)
		1	2	3	4	
1.	1st					
	2nd					
	3rd					
2.	1st					
	2nd					
	3rd					
TOTAL						
1.	A.S.F.	1st shift				
		2nd shift				
		3rd shift				
2.	C.F.	1st shift				
		2nd shift				
		3rd shift				
3.	X.	1st shift				
		2nd shift				
		3rd shift				
4.	N.E.	1st shift				
		2nd shift				
		3rd shift				
5.	I & Re.	1st shift				
		2nd shift				
		3rd shift				

[No. VI(a) 21/48/59.]

B. D. DESHMUKH,
Collector of Central Excise, Delhi.

MINISTRY OF COMMERCE & INDUSTRY*New Delhi, the 29th December 1959*

S.O. 69.—In exercise of the powers conferred on me by sub-clause (1) of Clause 3 of the Cotton Control Order, 1955, I hereby direct that the following amendment shall be made to the Textile Commissioner's Notification No. S.O. 2045, dated the 8th September, 1959, namely:—

In the said notification, in sub-paragraph (8) of paragraph (2), the following shall be added:—

“(c) Any other cotton which may be certified by the State Department of Agriculture or ‘agmarked’ under the Cotton Grading and Marking Rules, 1939, indicating the varietal purity and further certified as having a staple length above 1-1/8 inches by the Committee specified in Schedule ‘B’.”

(Sd.) D. S. JOSHI,
Textile Commissioner.

[No. 24(6)-TEX(A)/59-IV.]

HARGUNDAS, Under Secy.

New Delhi, the 4th January 1960

S.O. 70.—The Central Government, having considered in consultation with the Forward Markets Commission, the application for renewal of recognition made under section 5 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952) by the India Pepper & Spice Trade Association, Cochin, and being satisfied that it would be in the interest of the trade and also in the public interest so to do, hereby grants, in exercise of the powers conferred by section 6 of the said Act, recognition to the said Association for a further period of one year ending 10th January, 1961, in respect of forward contracts in pepper

2. The recognition hereby granted is subject to the condition that the said Association shall comply with such directions as may from time to time be given by the Forward Markets Commission.

[No. 34(21)-TMP/FMC/59.]

T. S. KUNCHITHAPATHAM, Under Secy.

New Delhi, the 5th January 1960

S.O. 71.—In exercise of the powers conferred by sub-section (1) of section 3 of the Khadi and Village Industries Commission Act, 1956 (61 of 1956), and in partial modification of the Ministry of Commerce and Industry notification No. S.O. 2048, dated the 11th September, 1959, the Central Government hereby declares the following industry to be a village industry to which the said Act applies, namely:—

“Manufacture of manure and methane gas from cowdung.”

[No. 4(5)/58-KVE.]

H. K. BANSAL, Under Secy.

ORDER*New Delhi, the 4th January 1960*

S.O. 72/IDRA/6/7.—In exercise of the powers conferred by section 6 of the Industries (Development & Regulation) Act, 1951 (85 of 1951), the Central Government hereby appoints Dr B Mukerji, Director, Central Drug Research Institute, Lucknow, to be a member of the Development Council established by the

Order of the Government of India in the Ministry of Commerce and Industry No. S.O. 1607 dated the 7th July, 1959, for the scheduled industries engaged in the manufacture and production of Drugs, Dyes and Intermediates, with effect from the 9th September, 1959, and directs that the following amendment shall be made in the said Order, namely:—

In the said Order after entry No. 10A relating to Shri B. K. Dhaon, the following entry shall be inserted, namely:—

"10B. Dr. B. Mukerji, Director, "technical knowledge" "Member"
Central Drug Research Institute,
Lucknow."

[No. 4(2)IA(II)(G)/59.]

A. K. CHAKRAVARTI, Under Secy.

(Indian Standards Institution)

New Delhi, the 31st December 1959

S. O. 73.—In pursuance of sub-regulation (1) of regulation 8 of the Indian Standards Institution (Certification Marks) Regulations, 1955, the Indian Standards Institution hereby notifies that one licence, particulars of which are given in the Schedule hereto annexed, has been granted authorizing the licences to use the Standard Mark.

THE SCHEDULE

Sl. No.	Licence No. and Date	Period of Validity From To	Name and Address of the Licensee	Article/ Process covered by the Licence	Relevant Indian Standard
I.	CM/L-157 23-12-1959	1-1-1960 31-12-1960	M/s. Shashi Brothers Private Ltd., Vaswani Mansions, Dinsha Wacha Road, Bombay-7.	Rubber Insulated Cables, TRS (Tough Rubber Sheathed) Type, 250 Volt Grade	IS : 434-1953 Specification for Rubber Insulated Cables and Flexible Cords for Electric Power and Lighting (for Working Voltages Up to and Including 11 kV) (Tentative)

[No. MDC/12(289)]

New Delhi, the 1st January 1960

S. O. 74.—In pursuance of sub-regulations (2) and (3) of regulation 3 of the Indian Standards Institution (Certification Marks) Regulations, 1955, the Indian Standards Institution hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed, have been established during the period 16th December to 31st December, 1959.

THE SCHEDULE

Sl. No.	No. and title of the Indian Standard established	No. and title of the Indian Standard or Standards, if any, superseded by the new Indian Standard	Brief Particulars
(1)	(2)	(3)	(4)
I.	IS : 410-1959 Specification for Rolled Brass Plate, Sheet, Strip and Foil (Revised)	IS : 410-1953 Rolled Brass Plate, Sheet, Strip and Foil.	This standard covers the requirements for four grades of rolled brass plate, sheet, strip and foil required for engineering and general purposes and designed as Grades Bs 70, Bs 65, Bs 63 and Bs 60. (Price Rs. 2.50).

(1)	(2)	(3)	(4)
2.	IS : 943-1959 Specification for 680-l/min (or 150-gal/min) Trailer Pump for Fire Brigade Use.	..	This standard lays down requirements regarding material, design and construction, workmanship and finish and acceptance tests of 680-l/min (or 150-gal/min) trailer pump for fire brigade use. (Price Rs. 2.00).
3.	IS : 1139-1959 Specification for hot Rolled Mild Steel and Medium Tensile Steel Deformed Bars for Concrete Reinforcement.	..	This standard covers the requirements and the methods of test for hot rolled mild steel and medium tensile steel deformed bars for concrete reinforcement. (Price Rs. 2.50).
4.	IS : 1250-1958 Proof Corrections for Printers and Authors.	..	This standard prescribes two sets of symbols to be used in correcting proofs, one in the margin and the other at the place in the text where the correction is to be made. It also includes some recommendations for preparation of copy for the printer. (Price Rs. 5.00).
5.	IS : 1255-1958 Code of Practice for Installation and Maintenance of Paper-insulated Power Cables (Up to and including 33 kV)	..	This code of practice deals with the installation, operation, testing and maintenance of impregnated paper-insulated lead-sheathed solid type cables used for power transmission and distribution for voltages up to and including 33 kV. It covers cables generally conforming to IS : 692-1957, and does not apply to cables specially intended for laying in mines and quarries. (Price Rs. 10.00).
6.	IS : 1307-1958 Specification for Aldrin Emulsifiable Concentrates.	..	This standard prescribes the requirements and methods of test for aldrin emulsifiable concentrates. (Price Rs. 5.00).
7.	IS : 1308-1958 Specification for Aldrin Dusting Powders.	..	This standard prescribes the requirements and the methods of test for aldrin dusting powders containing varying percentages of aldrin, technical. (Price Rs. 3.00).
8.	IS : 1313-1958 Methods for Determining Shrinkage of Knitted Goods Containing Wool.	..	This standard prescribes methods of test for determining relaxation shrinkage on soaking with water, felting shrinkage on washing and felting shrinkage on milling of knitted goods containing wool. The methods are applicable to both fabrics and complete garments. (Price Rs. 4.00).
9.	IS : 1327-1959 Methods of Testing Tin Coating on Tin-Plate.	..	This standard prescribes test procedures for the determination of weight and porosity of tin coating of hot-dipped, tin-plate and electrolytic tin-plate. (Price Rs. 1.50).

(1)	(2)	(3)	(4)
10.	IS : 1335-1959 Methods for the Direct Determination of Alumina in Refractory Materials (<i>Tentative</i>).	..	<p>This standard is supplementary to IS : 485-1953 and prescribes the methods for the direct determination of alumina in</p> <p>(a) silica rocks, sands and silica refractories containing from 0.1 to 10 percent of alumina ; and</p> <p>(b) alumina-silicate refractories and raw materials containing from 10 to 65 per cent of alumina.</p> <p>(Price Rs. 2.50).</p>
11.	IS : 1339-1959 Specification for Lead Cable Alloy	..	<p>This standard covers the requirements for lead cable alloy ingot suitable for manufacture of sheaths of electric cables. (Price Rs. 1.50).</p>
12.	IS : 1341-1959 Specification for Cold Rolled Mild Steel Butt Hinges.	..	<p>This standard lays down the requirements regarding material dimensions, manufacture and finish of cold rolled mild steel butt hinges. (Price Rs. 2.00).</p>
13.	IS : 1348-1959 Method for Determination of Kemp Content of Raw Wool.	..	<p>This standard prescribes a method for determining the kemp content of raw wool. (Price Rs. 1.50).</p>
14.	IS : 1380-1959 Specification for Ink, Finger Printing, Black.	..	<p>This standard prescribes the requirements and the methods of sampling and tests of ink, finger printing, black used for taking impressions of fingers, thumbs and palms for the purpose of identification of persons. (Price Rs. 2.00).</p>
15.	IS : 1385-1959 Specification for Phosphor Bronze Rods and Bars, Sheet and Strip, and Wire.	..	<p>This standard covers the requirements, for three grades of phosphor bronze for rods and bars, sheet and strip, and wire designated as PBz 3, PBz6 and PBz 3 Pb. (Price Rs. 2.50).</p>

Copies of these Indian Standards are available for sale with the Indian Standards Institution "Manak Bhavan, 9 Mathura Road, New Delhi-1 and also at its Branch Offices at (i) General Assurance Building, 232 Dr. Dadabhai Nauroji Road, Fort, Bombay-1, (ii) P-11 Mission Row Extension, Calcutta-1, and (iii) 2/1 First Line Beach, Madras-1

N. MD 13-2

S. O. 75--In pursuance of regulation 4 of the Indian Standards Institution (Certification Marks) Regulations, 1955 the Indian Standards Institution hereby notifies that amendments to the Indian Standards given in the Schedule hereto annexed have been issued under the powers conferred by sub-regulation (1) of regulation 3 of the said regulations.

THE SCHEDULE

Sl. No.	No. and title of the Indian Standard amended	No. & date of Gazette Notification in which the establishment of the Indian Standard was notified	No. & date of the Amendment	Brief particulars of the amendment	Date of effect of the Amendment
(1)	(2)	(3)	(4)	(5)	(6)
I.	IS : 722 (Parts I & II)—1955 Specification for ACElectricity meters	S.R.O. 641 dated 17th March 1956	No. 2 January 1960	(i) In Part I, clause 10.1 after the item (h) the following new item has been added: " (i) Ratio of CT and VT, if applicable." (ii) In Part I, a new clause viz 10.3 has been added which provides for ISI Certification Marking. (iii) In Part II, clause 9.1 including Table III has been deleted and substituted by a new clause. Consequently reference to Table No. in clause 11.1 13.1, 15.1 and 15.3 has been amended accordingly.	15th January, 1960

[No. MD/13-5]

D. V. KARMARKAR,
Acting Director.

MINISTRY OF STEEL, MINES AND FUEL

(Department of Mines & Fuel)

New Delhi, the 30th December 1959

S.O. 76.—Whereas by the notification of the Government of India in the Department of Mines and Fuel (Ministry of Steel, Mines and Fuel) S.O. 297 dated the 28th January, 1959, under sub-section (1) of section 7 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), the Central Government gave notice of its intention to acquire the lands in the locality specified in the Schedule appended to that notification;

And whereas the competent authority in pursuance of section 8 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) has made his report to the Central Government;

And whereas the Central Government after considering the report and after consulting the Government of Madhya Pradesh is satisfied that the land measuring 366.13 acres described in the Schedule appended hereto should be acquired;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 9 of the said Act, the Central Government hereby declares that the lands measuring 366.13 acres described in the said schedule are hereby acquired.

The plans of the areas covered by this notification may be inspected in the office of the Collector, Surguja (MP) or in the office of the Coal Controller, 1, Council House Street, Calcutta or in the office of the National Coal Development Corporation Ltd. (Revenue Section), Darbhanga House, Ranchi.

SCHEDULE

Drawing No. Rev/29/59.
Showing lands to be acquired.

Korea Block 'D'

Sl. No.	Reserve Forest	Thana Tahsil	Tahsil No.	District	Area	Remarks
1.	Reserve Forest.	Baikuntpur	60	Surguja	366.13 acres Approximate.	Part.
TOTAL					366.13 Acres (Approximate.)	

Plots to be acquired:—Reserve Forest (Part).

Boundary Description:—

AB line passes along the West Chirimiri colliery

BC line passes through the Reserve Forest.

CD line passes through the Reserve Forest

DE line passes through the Reserve Forest.

EF line passes through the Reserve Forest.

FG line passes through the Reserve Forest

GH line passes through the Reserve Forest.

HI line passes through the Reserve Forest.

IA line is the common boundary of Korea Block 'D' and Northern boundary of Korea Block-1.

[No. C2-5(29)/57.]

B. ROY, Under Secy.

MINISTRY OF FOOD & AGRICULTURE

(Department of Agriculture)

(I.C.A.R.)

New Delhi, the 2nd January 1960

S.O. 77.—In pursuance of the provisions of sub-sections (e) and (f) of Section 4 of the Indian Oilseeds Committee Act, 1946 (9 of 1946), the following persons, on their being nominated by the State Government of Rajasthan, have been appointed by the Central Government to be the members of the Indian Central Oilseeds Committee for a term of three years with effect from the 1st April, 1959:—

1. Shri Shamsheer Singh, Joint Director of Agriculture, Rajasthan, Jaipur . Under Section 4(c).
2. Shri Gurdeep Singh, P.O. Kelwara, Tehsil Baran . Under Section 4(f)

[No. 8-3/59-Com.II.]

AJUDHIA PRASADA, Under Secy.

MINISTRY OF HEALTH

New Delhi, the 21st December, 1959

S. O. 78.—In pursuance of section 3 of the Pharmacy Act, 1948 (8 of 1948), and in modification of the notification of the Government of India, in the Ministry of Health, No. F. 7-26/53-DS,

dated the 23rd June, 1954, the Central Government hereby reconstitutes the Pharmacy Council of India consisting of the following members, namely :—

Sl. No.	Name and address
------------	------------------

I. Elected by the Inter-University Board under clause (a)

1. Shri M. L. Khorana, B.Sc., B.S. (Pharm.), M.S. (Mich), Head of the Section of Pharmaceuticals and Fine Chemicals, Matunga, *Bombay*—19.
2. Shri M. L. Sehroff, A. B. Hons. (Cornell), M. S. (M.I.T.), F.I.C., Head of the Department of Pharmacy University of Saugar, P. O. Sagar Patharia Hills, *Sagar*.
3. Surgeon Commander Jal R. Patel, M.D., F. C. P. S., J. P., Professor of Pharmacology, Grant Medical College, University of Bombay, *Bombay*.
4. Dr. C. S. Shah, B.Sc. (Bom.), Dr. Sc. (Germany), Professor Pharmacognosy, L.M. College of Pharmacy, Navarangpura, Ellis Bridge, *Ahmedabad*—9.
5. Dr. K. N. Gaiand, M.Sc., Ph.D. (Pb.), F.R.I.C., A.I.I.Sc., Head of the Department of Pharmacy, Punjab University, *Chandigarh*.
6. Dr. M. C. Nath, D.Sc., F.N.I., F.R.I.C., F.I.C., Chitnavis Prof. and Head of the University Department of Biochemistry, Nagpur University, *Nagpur*.

II. Members nominated by Central Government under clause (b)

1. Shri B. K. Mehra, M.Sc., M.S. (Pharm) (Phila-USA), M/s Dumex Ltd., Wavel House, Ballard Estate, *Bombay*—1.
2. Shri Wilfred Pereira, 2, Hunter's Road, Vepery, *Madras*—7.
3. Dr. S. B. Rao, M. Pharm., D.Sc. Nat. (Munich), Navratna Pharmaceutical Laboratories, P. B. No. 13, *Cochin*—2.
4. Dr. G. K. Karandikar, M.B.B.S. (Bombay), M. S., Ph. D. (Yale), Dean, D. J. Medical College and Civil Hospital, *Ahmedabad*.
5. Dr. G. B. Ramasarma, B.Sc., A.I.I.Sc., Ph.D., Chief of Research & Control Division, M/s Raptakos, Brett & Co. (Pvt.) Ltd., Worli, *Bombay*.
6. Shri K. R. Chandran, M/s Bliss & Cotton, 12-E, Connaught Place, *New Delhi*—1.

III. Elected by the Medical Council of India under clause (c)

1. *Dr. M. D. Patel, M.B.B.S., L.R.C.P. (Lond.), F.R.C.S. (Eng.), D.L.O. (Lond.), F.C.P.S., Surgical & Maternity Hospital and Radium Institute, Ellis Bridge, *Ahmedabad*—6.

IV. Ex-Officio Members under clauses (d), (e) and (f)

1. Director General of Health Services, *New Delhi*.
2. Director, Central Drugs Laboratory, *Calcutta*.
3. Chief Chemist, Central Revenues, *New Delhi*.

V. Elected by the State Pharmacy Councils under clause (g)

1. Shri V. Kalidas, M.A., LL.B., Managing Director, Raka Corporation, *Vijayawada*. (Andhra Pradesh)
2. Dr. Sheo Vehari Lal, M. Pharm., Ph. D., Government Analyst, Bihar Drugs Control Laboratory, *Patna*—4. (Bihar)
3. Shri N. R. Sharma, Model House, Terrace, Flat A Block, Opp. Robert Money School, *Bombay*—4. (Bombay)
4. **Shri N. P. Abraham, B. Pharm., M.S. (Pharm.) (Phila-USA), M/s Spencers & Co., *Madras*—2. (Madras)
5. Shri Fateh Chand Saggarr, B.Sc., Pindi Street, *Ludhiana*. (Punjab)
6. Dr. S. Rohatgi, Ph.D. (Lond.), F.L.S., M/s Hind Chemicals, Post Box 227, *Kanpur*. (Uttar Pradesh)
7. Dr. P. K. Sanyal, B.Sc., B. Pharm., Ph.C., Ph.D., Government Analyst, School of Tropical Medicine, *Calcutta*—12. (West Bengal)

Sl. No.	Name and address
---------	------------------

VI.—*Members nominated by State Governments under clause (h)*

1. Dr. M. Yusuffuddin Ansari, M.B.B.S., L.R.C.P., M.R.C.S., Ph.D., Professor of Pharmacology, Osmania Medical College, *Hyderabad*. (Andhra Pradesh)
2. Dr. U. C. Bordoloi, M.B. (Cal), D.R.C.O.G. (Lond.), D.G.O.L.M. (Dub.), Director of Health Services, Assam, *Shillong*. (Assam)
3. Dr. S. M. Hassan, M.B.B.S., D.T.M., Additional Director of Health Services, Bihar, *Patna*. (Bihar)
4. Shri B. V. Patel, B.Sc. (Rom.), B. Pharm. (Lond.), F.P.S., Drugs Controller for the State of Bombay, Manekjee Wadia Building, III Floor, 127, Mahatma Gandhi Road, Fort, *Bombay—1*. (Bombay)
5. Dr. B. C. Bose, Principal, M.G.M. Medical College, *Indore*. (Madhya Pradesh)
6. Dr. K. P. Sarathy, M.B.B.S., M.Sc., Assistant Director of Medical Services (Medical), and Assistant Drugs Controller, Madras State, *Madras*. (Madras)
7. Dr. J. K. Mohanty, Assistant Professor of Pharmacology, S.C.B. Medical College, *Cuttack*. (Orissa)
8. Dr. Mohinder Singh Grewal, P.C.M.S., Professor of Pharmacology, Government Medical College, *Patiala*. (Punjab)
9. Dr. K. M. Lal, M.B.B.S., Director of Health Services, U. P., *Lucknow*. (Uttar Pradesh)
10. Dr. Bidhu Bhushan Roy, M.B., Professor Pharmacology, R. G. Kar Medical College, *Calcutta*. (West Bengal)

*Continues as member in accordance with sub-section (1) of section 7 of the Pharmacy Act, 1948, until his successor is duly elected by the Medical Council of India.

**Continues as member in accordance with sub-section (1) of section 7 of the Pharmacy Act, 1948 till 24th November, 1960 or until his successor is duly elected whichever is longer.

[No. F.7-23/59-D.]

D. J. BALARAJ, Dy. Secy.

MINISTRY OF RAILWAYS

(Railway Board)

ORDER

New Delhi, the 26th December 1959

S.O. 79.—In exercise of the powers conferred by rule I of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) read with section 141 of the said Code, the Central Government hereby appoints the Chief Administrative Officer, Integral Coach Factory, Perambur, Madras, to sign and verify plaints, and written statements and to act for the Government in any suit or other proceedings by or against the Central Government in respect of Integral Coach Factory, Perambur, Madras.

[No. E(G)59LL2-22.]

S.O. 80.—It is hereby notified for general information that the Chief Administrative Officer, Integral Coach Factory, Perambur, Madras, is *ex-officio* authorised to act for and on behalf of the Central Government in respect of all judicial proceedings in which the Integral Coach Factory, may be concerned.

[No. E(G)59LL2-22.]

R. E. de Sa, Secy.

MINISTRY OF WORKS, HOUSING & SUPPLY*New Delhi, the 30th December 1959*

S.O. 81.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 (32 of 1958), the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Works, Housing and Supply No. S.O. 307, dated the 28th January, 1959, namely:—

In the table below the said notification, in column 2 against Serial No. 8, the following shall be added after the words "Premises, being evacuee property," namely:—

"or Government built property,"

[No. 14/2/59-Acc.]

R. C. MEHRA, Under Secy.

MINISTRY OF REHABILITATION*New Delhi, the 2nd January 1960*

S.O. 82.—In exercise of the powers conferred by Sub-Section (1) of Section 3 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby appoints Shri I. N. Chib, as Chief Settlement Commissioner for the purpose of performing the functions assigned to such Commissioner by or under the said Act, with effect from the date he took charge of his office.

[No. 11-A(5)/58-CSC(A/I)/I.]

S.O. 83.—In exercise of the powers conferred by Sub-Section (1) of Section 3 of the Displaced Persons (Claims) Supplementary Act, 1954 (No. 12 of 1954), the Central Government hereby appoints Shri I. N. Chib as Chief Settlement Commissioner for the purpose of performing the functions assigned to such Commissioner by or under the said Act, with effect from the date he took charge of his office.

[No. 11-A(5)/58 CSC/AI/II.]

KANWAR BAHADUR, Dy. Secy.

(Office of the Chief Settlement Commissioner)*New Delhi, the 7th January 1960*

S.O. 84.—In exercise of the powers conferred on me by Sub-Section (2) of

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Shri T. C. Aggarwal, D C S.C. 2. Shri Y. L. Taneja, S.C. 3. Shri M. S. Chaddah, S.C. 4. Shri T. C. Gupta, S.C. 5. Shri C. P. Sapia, S.C. 6. Shri M. L. Vijh, S.C. 7. Shri G. B. Lalwani, S.C. 8. Shri H. C. Hans, A.S.C. | <p>Section 34 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 (44 of 1954), I hereby delegate with immediate effect to the marginally noted officers, the following powers of the Chief Settlement Commissioner:—</p> |
|--|--|

1. Power to hear appeals under Section 23 of the said Act.
2. Power to hear revisions under Section 24 of the said Act.

[No. 11-A(5)/58/CSC/AI/III.]

S.O. 85.—In exercise of the powers conferred on me by Sub-Section (2) of Section 10 of the Displaced Persons (Claims) Supplementary Act, 1954 (XII of 1954) read with rule 99 of the rules framed under Section 40 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 (44 of 1954) I delegate to

Sarvashri Mehar Singh Chaddah and Y. L. Taneja, Settlement Commissioners with immediate effect, the following powers of the Chief Settlement Commissioner:—

1. Power to allocate Rehabilitation Grant Applications to the Settlement Officer by general or special order under Sub-Section (1) of Section 4 of the said Act.
2. Power to require a Settlement Officer to appoint one or more persons to advise him in any proceeding pending before him, under Sub-Section (2) of Section 6 of the said Act.
3. Power to transfer any Rehabilitation Grant Application pending before a Settlement Officer to another Settlement Officer under Section 7 of the said Act.
4. Power to call for the record of any case decided by the Settlement Officer and pass order in the case under proviso to Sub-Section (3) of Section 4 of the said Act.

[No. 11-A(5)/58/CSC/AI/IV.]

S.O. 86.—In exercise of the powers conferred on me by Sub-Section (2) of Section 10 of the Displaced Persons (Claims) Supplementary Act, 1954 (XII of 1954), I have delegated to Sarvashri Mehar Singh Chaddah and Y. L. Taneja, Settlement Commissioners with immediate effect, the following powers of the Chief Settlement Commissioner:—

1. Power to transfer cases to Settlement Officers by general or special order under sub-section (1) of Section 4 of the said Act.
2. Power to require a Settlement Officer to appoint one or more persons to advise him in any proceeding pending before him, under sub-section (2) of Section 6 of the said Act.
3. Power to transfer any case pending before a Settlement Officer to another Settlement Officer under Section 7 of the said Act.

[No. 11-A(5)/58/CSC/AI/V.]

I. N. CHIB, Chief Settlement Commissioner.

CORRIGENDUM

(Office of the Chief Settlement Commissioner)

New Delhi, the 4th January 1960

S.O. 87.—In this Ministry's Notification No. 11-A(5)/58/CSC/AI, dated the 6th May, 1959, please *delete* the words "with immediate effect", and add the following after the word 'officers':—

"with effect from the date these officers were notified as Deputy Custodian General/Assistant Custodian General."

[No. F. 16(11)-Admn(Prop)/59.]

I. N. CHIB, Custodian General of Evacuee Property.

(Office of the Chief Settlement Commissioner)

New Delhi, the 26th December 1959

S.O. 88.—Whereas the Central Government is of opinion that it is necessary to acquire the evacuee properties specified in the Schedule hereto annexed, in the State of Bihar for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons ;

Now, therefore, in exercise of the powers conferred by section 12 of the Displaced Persons (Compensation and Rehabilitation), Act, 1954 (44 of 1954), it is notified that the Central Government has decided to acquire, and hereby acquires, the evacuee properties specified in the Schedule hereto annexed.

THE SCHEDULE

Sl. No.	Particulars of the evacuee property.	Name of the town and locality, village in which the property is situated. (H. No., C. No. & other particulars).	Name of the evacuee with full address
1	2	3	4
1.	Garden and Agricultural land.	Plot No. 1915 . . . 0.59 acres 535 . . . 0.08 " 540 . . . 5.62 " Village Sabalpur P. S. Mal-salami, Patna, City.	Md. Hasheen, Village Sabalpur, P. S. Malsalami, Patna City.

[No. 7(12) Policy-II/58.]

New Delhi, the 30th December 1959

S.O. 89.—Whereas the Central Government is of opinion that it is necessary to acquire the evacuee properties specified in the Schedule hereto annexed in Udaipur Division in the State of Rajasthan for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons;

Now, therefore, in exercise of the powers conferred by section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), it is notified that the Central Government has decided to acquire, and hereby acquires, the evacuee properties specified in the Schedule hereto annexed.

SCHEDULE

Sl. No.	Locality	Ward No.	Municipal No. of prop.	Name of the evacuee owner	Description of evacuee prop.
1	2	3	4	5	6
UDAIPUR CITY					
1	Kirwari . . .	7	275	Husain Bux s/o Allah Bux.	House.
2	Mahawatwari . . .	4	97	Ahmed Noor & Wali Mohd. ss/o Sher Khan.	Do.
3	Do.			Do.	Plot.
4	Hethi Pole . . .	7	190	Yahya Ali s/o Tahir Ali	House.
5	Karwari	7	270	Jamal Husain & Kurban Husain ss/o Mohd. Husain and Mumtaz Begam wd/o Mohd. Husain.	Do.
6	Boharwari	7	151	Kurban Husain & Ismail ss/o Tayab Ali.	Do.
7	Do.	7	126	Asgar Ali s/o Gulam Ali	Do.
8	Khairatiwara . . .	5	795	Syed Husain s/o Ahmed Ali.	Do.
9	Nada Khada	8	313	Dil Aziz, Dil Rayaz etc.	Western Portion of the House.
DUNGARPUR					
10	Bazar	5	13	Niaz Mohd. s/o Rasul Khan.	House.
11	Dungarpur	9	112	Fakrudin s/o Sultan	Do.
SAGWARA					
12	Galia Kot	6	69	Hasan Ali s/o Nazar Ali.	House.
BANSWARA					
13	Bohra Gali	4	170	Ibrahim s/o Mohd. Ali.	Do.
14	Do.	4		Do.	Plot near House.
15	Do.	4	152	Ahsan Ali s/o Nazar Ali.	House.
CHITTORGARH					
16	Uparla Para	1	508	Asgar Ali s/o Gulam Ali.	House.

1	2	3	4	5	6
PARTAPGARH					
17	Near Pandit Ji Ki Bawari	8 251 K 17	Mohd. s/o Mohd. Mazrulhaq.	House	
18	Bohra Gali . . .	143/53	Ali Husain s/o Kamar Ali.	Do.	
19	Near Pandit Ji Ki Bawari	8 359 K 14	Kifayatulla s/o Harfan Ali.	Do.	
20	Do. . . .	8 52	Mumtaz Husain s/o Syed Husain.	Do.	
NIMBAHERA					
21	Kasai Mohalla . . .	2 253	Mohd. Sadiq s/o Abdulla	Do.	
22	Bari Mohalla . . .	2 54	Mst. Maimuna Bai d/o Tajmal Husain.	Do.	
23	Moti Bazar . . .	5 5	Gulam Rabanis/o Allah Bux.	Do.	
24	Do. . . .	5 5	Do.	Near House No. 5/5	
25	Do. . . .	5 ..	Do.	Plot near H. No. 5/5	
26	Neem Wali Gwar . . .	5 264	Do. . . .	1/2 Portion	
DISTRICT BHILWARA					
27	Gul Mani	6 64	Gulam Rabanis/o Allah Bux.	Shop.	
28	Bazar in Sangar ner	2 431	Husain s/o Meeru . .	House.	
29	Do.	3 102	Tayab s/o Abdulla . .	Do.	
30	Do.	2 45	Dawooda s/o Husain . .	Do.	
31	Badli Khara . . . .	.. ..	Assin Khan s/o Bahadur Khan.	Do.	
32	Bazar in Sangar ner . . .	1 492	Wazir Khan s/o Abdulla	Do.	
SHAHUPURA					
33	Hamalum Ka Bas . . . .	.. ..	Idu s/o Kasim Hamal	House	
34	Do. . . . .	.. ..	Do. . . .	Do.	
35	Do.	Plot 20' x 12'	Do. . . .	Plot	
36	Do. . . . .	.. ..	Ramzan s/o Allahdin Hamal.	House.	
37	Pingaron Ka Bas	2 253	Mst. Jarun D/o Hazari	Do.	
38	Do.	2 267	Allahdin & Khuda Bux ss/o Kadir Bux.	Do.	
39	Do.	2 280	Do. . . .	Do.	
40	Kalm khani Mohalla . . .	.. ..	Hasti Khan s/o Ahmed Khan.	Do.	

[No. 1 (1221) 58/Comp.III/Prop.I.]

S.O. 90.—Whereas the Central Government is of opinion that it is necessary to acquire the evacuee properties specified in the Schedule hereto annexed in Nagour district in the State of Rajasthan for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons;

Now, therefore, in exercise of the powers conferred by section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), it is notified that the Central Government has decided to acquire, and hereby acquires, the evacuee properties specified in the Schedule hereto annexed

SCHEDULE

Sl. No.	Locality	Ward No.	Municipal No. of Prop.	Name of the evacuee owner	Description of evacuee property
1	2	3	4	5	6
NAGOUR					
1	Qazi Ka Chowk . . .	E.P.	38/49-50	Mohd. Salim s/o Fateh Mohd.	House.
2	Naya Darwaza . . .	"	238	Gulam Mohd., Gulam Farid ss/o Ramzan Chadwa.	"
3	Lohar Pura . . .	"	286	Kabir Ahmed s/o Kasim Lohar.	"
4	Naynka Bas . . .	"	345	Usman Gani s/o Chotu	"
5	Bajar Wara . . .	"	364	Abdul Rahim s/o Kasim Bux.	"
6	Ladye Bas . . .	"	426	Ramzan s/o Kasim Mochi.	"
7	Nakas Gate . . .	"	523	Mst. Subhano D/o Gafor Hamala.	"
DIDWANA					
8	Ajmeri Gate . . .	"	147	Abas Ali s/o Akbar Ali	"
9	Din Darwaza . . .	"	139	Ramzani & Mangoo ss/o Peeru Dhobi.	"
10	Nagori Gate . . .	"	154	Surya s/o Bahadur Khan	"
LADNU					
11	Khatyo Ka Bas . . .	"	17/388	Sadiq s/o Samdat Nai	"
12	Sher Bas near Maji Ka Talab.	"	18	Gani s/o Abdu	"
13	Tiloy Ka Bas . . .	"	"	Ali & Gani ss/o Ajmeri Teli.	"
14	Do. . .	"	368	Ghisa s/o Mubark	"
15	Mochoyon Ka Bas . . .	"	132	Mohd. Salam & Dina ss/o Usman Mochi	Two Houses One Plot One Shop.
16	Bisatyon Ka Mohalla . . .	"	379, 412	Ahmed Hussain s/o Moulla Nai.	House.
MAKRANA					
17	Ghora Bas . . .	"	950-51	Zahoo s/o Hanif Chohan	"
18	Peer Ke Dharga . . .	"	19/50-51	Mustfa s/o Hussain Bux	"
19	Near Bazar . . .	"	25/50-51	Mohd. s/o Gulba	"
20	Kalander Masjid . . .	"	37/50-51	Chand s/o Allahadin	"
21	Idgah Ka Mohalla . . .	"	38/50-51	Abdul Gani s/o Ramzan	"
22	Kalander Masjid . . .	"	54/50-51	Gulam Nabi s/o Hussain Bux	"
23	Near Railway Station . . .	"	62/50-51	Abdul Gafor s/o Kamrudin.	"
24	Near Dak Bungalow . . .	"	66/50-51	Mana s/o Bahadur	"
25	Mohnon Ka Moh. . .	"	114/50-51	Jamal & Gafoor ss/o Allahadin	Open Plot.
26	Peer Ke Darga . . .	"	120/50-51	Gulam Nabi s/o Lal Mohd.	"
27	Do. . .	"	"	Do.	Bara
28	Gulzaripura . . .	"	125/50-51	Nathu s/o Gulab Ji Nai	"
29	Near Dak Bungalow . . .	"	136/50-51	Ramzani s/o Mala Bepari	"
30	Kalaandr Masjid . . .	"	141/50-51	Juma & Jalal ss/o Khan Mohd.	"

1	2	3	4	5	6
31	Loharon Ka Moh.	E.P.	142-431, 458	Ushman s/o Allah Bux & Others	House.
32	Near Home Singnal	"	144/50-51	Rahim Bux s/o Ishak Rander	"
33	Bistoyan Ka Moh.	"	151/50-51	Ashraf s/o Lal Mohd.	"
34	Idgah Mohalla	"	652-53	Chand Mohd. s/o Sammanji Belium	"
NAWA					
35	Baraty Mohalla	"	36	Rasalder s/o Azanali	"
36	Do.	"	80	Mohd. Ushman Khan s/o Wazir Khan	"
37	Beparion Ka Bas	"	81	Abdul Gani s/o Misru	"
38	Regar Mohalla	"	68	Shakoor Ali Shah s/o Ashraf Ali Sah	"
KUCHMAN CITY					
39	Khanzandhi Mohalla	"	37	Abdul Hamid s/o Ramzan Khaliq	"
40	Do.	"	38	Mubark Khan s/o Alam Ali Khan	"
41	Do.	"	40	Mahboob Khan s/o Nalu Khan	"
42	Chipyon Ka Mohalla	"	48 & 141	Ahmed s/o Phazu	"
43	Do.	"	"	Do.	"
44	Near Suraj Pole	"	52	Vazrudin and Ahmed s/o Abdul Gaffoor	"
45	Near Old Post Office	"	65	Ishaq s/o Ismail	"
46	Khanzada Mohalla	"	134	Abdul Latif s/o Usif	"

[No. 1(1221)58/Comp. III/Prop. I]

S.O. 91.—Whereas the Central Government is of opinion that it is necessary to acquire the evacuee properties specified in the Schedule hereto annexed in Jodhpur Division in the State of Rajasthan for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons;

Now, therefore, in exercise of the powers conferred by section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), it is notified that the Central Government has decided to acquire, and hereby acquires, the evacuee properties specified in the Schedule hereto annexed.

SCHEDULE

Sl. No.	Locality	Municipal No. of Prop. and Ward No. and Circular No.	Name of the evacuee owner	Description of evacuee property
1	2	3	4	5
JODHPUR				
1	Chabdaraon Ka Bas	9-4-59	Abdul Gaffor s/o Karim Bux	House.
2	Ratanda	Plot No. 129	Faizkahn s/o Azim	Plot.
3	Khanda Falsa	8-4-219	Basir Khan s/o Nazir Khan	House.
4	Sardarpura	Plot No. 296 C.	Razhk & Gani ss/o Lal Mohd.	Plot.
5	Udaimandar	2-8-3	Karim Bux s/o Hussain Bux	House.

1	2	3	4	5
6	Gulab Sagar Ka Bacha	3-4-113	Noor Mohd. s/o Lal Mohd.	House
7	Mahamandar	15-3-166	Nazir Khan s/o Nabi Bux	"
8	Kabutron Ka Chowk	9-2-86	Fakir Mohd. & Abdul Satar ss/o Abdul Rahiman, Fatch Mohd. s/o Ismail, Hussain & Abdul s/o Allaha Bux.	"
9	Do.	9-3-87	Do.	"
LADNU				
11	Telion Ka Bas	49	Ismail s/o Yasmin Teli	"
12	Do.	51	Ghasi Khan s/o Bpdu Khan Kaim Khanj	"
13	Pinjhare Mohalla	55	Suleman & Sultan ss/o Ahmed Pinghas	"
14	Harijan Ka Bas	20	Ibrahim Shah s/o Fared Shah	"
15	Telon Ka Bas	22	Noor Mohd. s/o Abdula	"
16	Kaim Khanj Bas	52	Taj Mohd. & Nawab Ali ss/o Kaju Khan	"
17	Kazion Ka Bas	71	Sheroo Banu W/o Mohd. Jamaldin & her two sons Hanif & Gulam Rastul.	"
18	Bepation Ka Bas	76	Idu s/o Saman Bepari	"
19	Do.	77	Geni s/o Manda	"
20	Silawaton Ka Bas	1	Ahmed s/o Saman	"
21	Teloin Ka Bas	30	Ahmed Hussain s/o Akbar Teli	"
DIDWANA				
22	Nagori Gate	15	Faqir Mohd. s/o Ramzan	"
23	Kotwali Mohalla	46 & 47	Sabudin s/o Mst. Ganj	2 Houses
PALI				
24	Nayion Ka Bas Jangiwada.	37/49-50	Mohd. s/o Ramzan Sujat	One kacha House.
25	Qazion Ka Bas	30/50-51	Saludin s/o Allahrakha	House.
26	Do.	43/49-50	Abdul Gafoor s/o Abdul Rahim	"

[No. 1(1221)58/Comp. III/Prop. I]

S.O. 92.—Whereas the Central Government is of opinion that it is necessary to acquire the evacuee properties in the Union territory of Delhi specified in the Schedule below for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons;

Now, therefore, in exercise of the powers conferred by section 12 of the Displaced Persons (Compensation and Rehabilitation, Act, 1954 (44 of 1954), it is notified that the Central Government has decided to acquire, and hereby acquires, the evacuee properties specified in the Schedule below.

THE SCHEDULE

Sl. No.	Particulars of evacuee property	Name of the town and locality in which the evacuee property is situated	Name of evacuee
1	2	3	4
1.	VII/2353/4279-81	Gali Shah Tara, Delhi.	1. Abdulla 2. Mussamat Munnoo 3. Bundu 4. Mussamat Nathoo, (Heirs of Nannhi)

1	2	3	4
2.	Only machinery of evacuee firm known as Bharat Motor Workshop installed in (non-evacuee Property No. VI/849 (old)/1782 (new).	Lal Kuan, Delhi.	Shri Nazir Ahmed.
3.	VII/1285-89/1/3/1864 (new)	Lal Kuan Bazar, Delhi.	Sheikh Mohamed Yusuf Bari.

[No. 1 (1218)58/Comp. III/Prop. I.]

S.O. 93.—Whereas the Central Government is of opinion that it is necessary to acquire the evacuee properties specified in the Schedule hereto annexed in the State of Punjab for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons ;

Now, therefore, in exercise of the powers conferred by section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), it is notified that the Central Government has decided to acquire and hereby acquires, the evacuee properties specified in the Schedule hereto annexed.

THE SCHEDULE

Sl. No.	Particulars of evacuee property	Name of the town and locality, Village in which evacuee property is situated	Name of the evacuee
1.	House and Shop Nos. 165B, 166, 167, 168, 169.	Dhuri Gate, Sangrur, District Sangrur.	Mukhtiar Mohd. son of Sheikh Nawab Ali.
2.	Agricultural land comprised in Khasra No. 358 measuring 6 Bighas 7 Biswas.	Village Chokran Tehsil Malerkotla District Sangrur.	Bashir Mohd. Khan son of Hassan Khan.
3.	Agricultural land comprised in Khasra Nos. 65, 50, 45, 67, measuring 32 Bighas.	Village Badachhe Kalan Tehsil Malerkotla Distt. Sangrur.	Murad Ali son of Rusme Khan.
4.	Agricultural land comprised in Khasra No. 811 measuring 2 Bighas 16 Biswas.	Village Shahpur, Sub-Tehsil Dhuri, District Sangrur.	Ishmail s/o Nabi Bux.
5.	Agricultural land comprised in Khasra Nos. 3296, 295 measuring 4 Bighas 8 Biswas.	Village Ramgarh Tehsil Barnala, District Sangrur.	Rehma s/o Mehmadi.
6.	Agricultural land comprised in Kili Nos. 1535, 1537, 1530, measuring 21 Bighas 12 Biswas.	Village Dhanaula Khurd, Tehsil Barnala, Distt. Sangrur.	Fattu son of Niwaz.

[No. F 1(1219)-58 Comp. III Prop-I]

New Delhi, the 4th January 1960

S.O. 94.—In exercise of the powers conferred by sub-section (i) of Section 6 of the Administration of Evacuee Property Act, 1950 (XXXI of 1950) the Central Government hereby appoints for the State of Punjab, Shri Balmokand P.C.S. in the Office of the Custodian of Evacuee Property, Jullundur, as Deputy Custodian of Evacuee Property, for the purpose of discharging the duties assigned to the

Custodian by or under the said Act with effect from the date he took over charge of his office.

[No. 2(4)-Admn(Prop)/59.]

M. L. PURI, Settlement Commissioner (Admn.) &
Ex-Officio Under Secy.

MINISTRY OF LABOUR & EMPLOYMENT

New Delhi, the 30th December 1959

S.O. 95.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of Shri K. Bag Singh, Coal Mines Welfare Commissioner, Dhanbad, in the industrial dispute between the employers in relation to the Victory Colliery and their workmen represented by the Colliery Mazdoor Sangh, Dhanbad.

BEFORE THE ARBITRATOR BRIG. K. BAG SINGH, COAL MINES
WELFARE COMMISSIONER, DHANBAD

ARBITRATION No. 1—ARB. OF 1959

Employers in relation to Victory Colliery, P.O. Jharria, District Dhanbad,

AND

Their workmen represented by the Colliery Mazdoor Sangh, Dhanbad.

Re: Arbitration under Section 10A of the Industrial Disputes Act, 1947 (Act XIV of 1947).

Dhanbad, dated the 2nd December 1959

PRESENT:

Brigadier K. Bag Singh, Coal Mines Welfare Commissioner—Arbitrator.

APPEARANCES:

Shri M. L. Agarwala, Managing Director, United Mining Company (Private) Limited Victory Colliery—for the employers.

Shri Kantil Mehta, President, and Shri S. Das Gupta, Secretary, Colliery Mazdoor Sangh—for the workmen.

INDUSTRY: Coal.

STATE: Bihar.

AWARD

By an arbitration agreement, dated 27th December 1958 made under subsection 1 of Section 10A of the Industrial Disputes Act, 1947 (XIV of 1947), the employers in relation to Victory Colliery and their workmen represented by Colliery Mazdoor Sangh, Dhanbad, referred the industrial dispute in respect of the following matters specified in the said agreement to my arbitration.

- (i) reinstatement of (a) Shri Ramdas Beldar, (b) Shri Brich Nunia, (c) Shri Deobrich Nunia, (d) Shri Chandradeep Nunia, (e) Shri Bishundharl Nunia, (f) Shrimati Asarhi Kamin, (g) Shri Butu Beldar.
- (ii) Dearness allowance should be given on lead and lift with retrospective effect.
- (iii) Wagon Loaders should get one and half times the normal wages for wagon loading on Sunday.
- (iv) Final payments should be made immediately to Bhagirath Yadav, Balram Singh and others who had worked at Quarry No. were paid at less rate than fixed as per agreement.
- (v) Lay-off compensation should be paid immediately to Tulsi Sirdar and his gang for 5th December 1957 and Asarhi Kamin's gang for 17th December 1957.

- (vi) The names of Shri Bhagirath Yadav and Shri Balram Singh should be entered in weekly payment book and be paid weekly as before which has been suspended with effect from 17th December 1957 as they are already members of Coal Mines Provident Fund Scheme.
- (vii) Shri Bhagirth Yadav and Shri Balram Singh, Earth and Stone Cutters should be allowed to increase the number of workmen and keep the strength as done by them prior to Shri Meghai Gope's appointment on stone and earth cutting.
- (viii) Shri Huru Turi, Trammer Sirdar's commission has been stopped since the beginning of the work after strike. This should be paid to him with retrospective effect.
- (ix) As per agreement, dated 27th November 1957 it was settled that total sum of Rs. 3,000 (rupees three thousand only) would be paid in settlement of claim for lead and lift for Quarry Nos. 1 and 2 for weeks ending 9th August 1956 to 27th December 1956 as per Union's letter No. VI(19)/57/617, dated 7th May 1957. Nearly a sum of Rs. 1,100 has been paid to the workers concerned on this account and the balance is lying unpaid till now, as mentioned in our letter No. VI(19)/58-59/1041-42, dated 26th June 1958. This payment should be made to the workers concerned at the earliest.
- (x) The deductions made from the bill of soft coke manufacturers for not extinguishing the Coke Bhattas during the strike period are not justified and hence should be refunded."

2. After the said arbitration agreement was signed, the Government of India, Ministry of Labour & Employment by Notification No. LR.II-1(101)/58, dated 7th January 1959 in pursuance of sub-section 3 of Section 10A of the Industrial Disputes Act, 1947 was pleased to publish the said arbitration agreement. After the publication of the said agreement the parties were directed by me to file their written statements and I heard the parties on one occasion.

3. Thereafter the parties by their joint application, dated 14th November 1959 have forwarded to me the terms of settlement which were reached between them on 6th August 1959 and have prayed that this reference may be disposed of on the terms of the said settlement and an award passed in terms thereof. A copy of the terms of settlement reached between the parties is annexed hereto and marked Annexure 'A'. As I am satisfied that in the circumstances of the case, the terms of settlement are fair and reasonable, I make an award in terms of that settlement which shall form part of this award.

4. This arbitration award is submitted to Government as required by sub-section (4) of Section 10A of the Industrial Disputes Act, 1947 (XIV of 1947).

K. BAGH SINGH,
Coal Mines Welfare Commissioner,
Arbitrator, Dhanbad.

ANNEXURE 'A'

BEFORE THE HON'BLE ARBITRATOR (BRIGADIER K. BAG SINGH,
COAL MINES WELFARE COMMISSIONER, DHANBAD)

ARBITRATION No. 1—ARB. OF 1959

Employers in relation to Victory Colliery, Messrs. United Mining Company (Private) Ltd., P.O. Jharia (Dhanbad)

AND

Their Workmen, represented by the Colliery Mazdoor Sangh, Opposite to State Bank of India, Dhanbad.

The humble petition on behalf of the parties above-named, Most respectfully Sheweth:—

That without prejudice to the contention of the parties mentioned in their respective statements the parties have amicably settled the disputes referred to the Hon'ble Arbitrator, on the following:—

Terms

Item No. 1(a).—The Union agreed to withdraw the demand for reinstatement of Shri Ram Dass Beldar. It was further agreed that Shri Ram Dass Beldar will vacate the quarters occupied by him immediately.

Item No. 1(b), (c), (d) and (e).—Sarvashri Brich Noonina, Deobrich Nonura, Chandradip Noonina and Bishundahri Bhuiya will be taken back in their original jobs after they offer appology to the Managing Director, provided they report for duties within two weeks from the date of this agreement. There will be no break in the continuity of their service and the period from the date of dismissal to the date of re-joining will be treated as leave without wages for the above purpose only. They will not be entitled to any back wages, bonuses or any other allowances, etc., during the above period.

Item No. 1(f).—The claim of reinstatement of Shrimati Ashari Kamin is withdrawn by the Union. At the request of the Union the management has agreed to pay her Rs. 350 (Three hundred and fifty rupees only) as an *ex-gratia* payment.

Item No. 1(g).—The case of Shri Butu Beldar is dropped by the Union.

Item No. (ii).—That as this demand is also pending before the Hon'ble Arbitrator, Shri A. K. Das Gupta, concerning the entire coal industry, parties agree to abide by the decision of the Hon'ble Arbitrator.

Item No. (iii).—The union drops this demand for the present

Item No. (iv).—The management agreed to pay the final dues of the Contractors Shri Bhagirathi Yadav amounting to Rs. 5,061-6-6 and Shri Balaram Singh amounting to Rs. 4,315 after adjustment of all the payments made to them and their labours against works done by them. The final payment will be made in two instalments one within 14th August 1959 and second within 14th September 1959. They will vacate the quarters after payment of the first instalment

Item No. (v).—This demand is dropped by the union.

Item No. (vi).—This demand is dropped by the union representing the workmen.

Item No. (vii).—This demand is dropped by the union.

Item No. (viii).—This demand is dropped by the union.

Item No. (ix).—It is agreed that after deducting the sum of Rs. 1,694 which has already been paid, the balance of Rs. 1,306, out of Rs. 3,000 will be paid by the management to the remaining persons within two weeks from the date of this agreement.

Item No. (x).—This demand is dropped by the union.

It is hereby prayed that the Reference may kindly be disposed of on the terms stated above and award passed in terms thereof.

S. DAS GUPTA,

For the Workmen.
Dated. 6-8-59.

M. L. AGARWALA,

For the Employers
Dated: 6-8-59

[No. LR-II-1(101)/58.]

New Delhi, the 1st January 1960

S.O. 96.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the Bhowra Colliery and their workmen.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD

REFERENCES No. 42 OF 1959

Employers in relation to the Bhowra Colliery

AND

Their Workmen.

PRESENT

Shri Salim M. Merchant, Presiding Officer

For the Workmen:

Sarvashri Prosant Burman, Vice-President and Ram Mitra, Secretary, Eastern Coal Company Collieries' Union.

For the Employers:

Shri S. S. Kapoor, Chief Personnel Officer.

Dhanbad, Dated the 7th December, 1959

INDUSTRY: Coal

STATE: Bihar.

AWARD

1. The Government of India, Ministry of Labour and Employment by Order No. F.L.R.II-1(111)58, dated 23rd June 1959, made in exercise of the powers conferred by clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Act XIV of 1947), was pleased to refer to me for adjudication the industrial dispute between the parties above-named, in respect of the subject matters specified in the following Schedule to the said order:—

SCHEDULE

(1) Whether the withdrawal of the benefit of bonus provided in the Coal Mines Bonus Scheme by the management of the Bhowra Colliery from the following garden mazdoors/malis, is justified. If not, to what relief are they entitled and from what date?

1. Shri Ramasabak.
2. Shri Parameswar,
3. Shri Chandradeo Singh
4. Shri Samser Ali.
5. Shri Mouladin.
6. Shri Aziz Khan.
7. Shri Bhagaban Das.
8. Shri Munnir Khan.
9. Shri Sant Bahadur.
10. Shri Rambrich.
11. Shri Khadan.
12. Shri Mahabir
13. Shri Surju.
14. Shri Tobarak;

(2) Whether the garden mazdoor, malis referred to above are employed on domestic and personal work within the meaning of paragraph 3(b) of the Coal Mines Bonus Scheme, 1948 and if not, to what relief are they entitled and from what date?

(3) Whether the following workmen formerly working as Chairman, lamp-cleaner, hammer-man, lorry-cleaner, etc., under the old management and as malis under the present Management are entitled to bonus under the Coal Mines Bonus Scheme and if so, from what date:—

1. Shri Jyoti Bauri,
2. Shri Parameshwar,
3. Shri Sabali Main,
4. Shri Ismile,
5. Shri Deonandan Gope,
6. Shri Gaya,
7. Shri Anadi Banerjee.

2. Before dealing with the merits of the dispute, it is necessary to state that the Bhowra Colliery, in which the workmen listed in items 1 and 3 to the Schedule are now working, was purchased by its present owners the Bhowra Kankanee Collieries Limited from the previous owners the Eastern Coal Limited, on 1st January, 1955. It appears that immediately on the transfer of the Bhowra and other collieries by M/s. Eastern Coal Company to the Bhowra Kankanee Collieries Limited an industrial dispute was raised by the Bihar Colliery Mazdoor Sangh which had *inter alia* demanded that the services of the workmen in the collieries taken over by M/s. Bhowra Kankanee Collieries Limited, should be treated as continuous and that the conditions of service and facilities which these workmen were enjoying under the previous owners should be guaranteed and continued by the new owners. It is admitted that on 14th January, 1955 a settlement was reached in that dispute before the conciliation officer. Under Para. 2 of the terms of that settlement the Bhowra Kankanee Collieries Limited agreed to treat as continuous the services of the workmen who had been taken over by them and Para. 3 of the Settlement provided as follows:—

“Agreed that the existing service conditions and the facilities will be continued, excepting pension, the responsibility of which will be borne by M/s. Eastern Coal Company Limited, according to the existing rules and that the question of payment of pension is now left over for amicable settlement between the Eastern Coal Co. Ltd.,

and the Union. Agreed also that M/s. Bhowra Kankanee Collieries Limited will have no liability regarding pension for past and future services of the workmen."

3. It is admitted that all the workmen listed under items 1 and 3 of the Schedule to the order of reference services were employed with the Eastern Coal Company Limited, the previous owners of the Bhowra Colliery, except the following:—

Shri Puran,
Shri Chandradeo Singh,
Shri Sant Bahadur; and
Shri Rambrich.

Who joined service after the Bhowra Colliery was purchased by the present owners. Of these Shri Chandradeo Singh left service on 24th February, 1958 and was not in employment on the date of this reference. The management has stated that the services of Shri Sabali Main, serial no. 3 in para 3 of the Schedule to the order of reference were terminated on 29th January, 1959 and subsequently under proceedings before the conciliation officer he was re-appointed as a new employee at the request of his Union.

4. With the regard to the rest of the employees listed in paras 1 and 3 to the Schedule, it is admitted by the management that they were old employees of the old management and were serving as Garden mazdoors/malis on the date the present management took over the Bhowra Colliery and were being paid quarterly bonus by their old employers, the Eastern Coal Company Limited. It is further admitted that the present management made deductions from the wages of these workmen of their contributions to their Provident Fund accounts for a period of about one year, ending December 1955, but thereafter the deductions were stopped. The workmen, thereafter, raised an industrial dispute claiming quarterly bonus, and as there was no settlement the dispute was referred to adjudication.

5. At the hearing the parties did not raise any issues other than the 3 issues under reference stated in the Schedule to the Government order of reference.

6. The first issue is whether the withdrawal of the benefit of bonus provided in the Coal Mines Bonus Scheme from the garden mazdoors/malis mentioned in para. 1 of the Schedule, is justified and if not, to what relief they are entitled and from what date?

With regard to the 10 garden mazdoors/malis mentioned in para. 1 of the order of reference, excluding the four who were subsequently employed, it is admitted that they were employed as such by the previous owners on the date of the transfer of the Colliery, i.e., 1st January, 1955 and that they have continued to be so employed by the present owners.

7. The Union's case as stated in its written statement is that the withdrawal of the benefit of bonus from these workers was not justified because (1) they were enjoying the benefits of bonus as a part of their condition of service and or as a facility, under the old management, the continuance of which was guaranteed to them by the present management under para. 3 of the terms of settlement dated 14th January, 1955, above referred to (Annexure I to the Union's written statement) and (2) the said settlement was one as defined by clause (P) of section 2 of the Industrial Disputes Act, 1947 (Act 14 of 1947) and has continued as binding on the parties as no notice provided by Section 19(2), had been given terminating the said settlement. The Union has further urged that in withdrawing the benefit of bonus the present management had committed a breach of the settlement dated, 14th January, 1955 and was liable to the penalty prescribed under Section 29 of the Industrial Disputes Act, 1947.

8. The management in its written statement has stated that the payment of bonus is a contingent liability, depending on the conditions prescribed by the Coal Mines Bonus Scheme; that under the exception provided by clause (b) of para. 3 of the Coal Mines Bonus Scheme, malis as a class are excluded from the payment of bonus; that as the previous owners had erroneously paid bonus to garden mazdoors/malis, the present management on detecting the error of the previous owners, stopped payment of bonus, that the payment of bonus was not a facility and as such its discontinuance by the present management to those who were not entitled to such payment under the Coal Mines Bonus Scheme, was not in violation of the terms of settlement dated 14th January, 1955 or in violation of the principles of natural justice.

9. Quarterly bonus is payable to employees in the coal mines to which the Coal Mines Bonus Scheme, 1948 (hereinafter called the Scheme) applies. It is relevant, therefore, to refer to some of the salient features of that Scheme. The Scheme was framed by the Government of India, Ministry of Labour Notification No. PF16(1)/48, dated 3rd July, 1948, made in exercise of the powers conferred by Section 6 of the Coal Mines Provident Fund and Bonus Scheme Ordinance, 1948 (VII of 1948). For the coal mines in West Bengal the Scheme came into operation from 12th May, 1947 and it is admitted that the Scheme to the employees of the Bhowra Colliery from that date. Para. 3 of the Scheme provides that every employee in a coal mine to which the Scheme applies shall be eligible to qualify for a bonus, except as provided in the exceptions to that paragraph. The relevant exception for the purposes of this dispute is continued in sub-clause (b) of Para 3 which is in the following terms:—

Para 3: "An employee in a coal mine shall not be entitled to a bonus under the Scheme for the period during which.....

(b) he is employed as a mali, sweeper or domestic servant on domestic and personal work."

The qualification for bonus in coal mines in West Bengal and Bihar are prescribed by Para 4 of the Scheme, clause (b) of which provides that an employee in a Coal Mine in West Bengal or Bihar shall qualify for a bonus from his employer in respect of quarters commencing on the first of January 1948, or any subsequent quarter provided he puts in attendance in the Coal Mine during that quarter for not less than 54 days if he is a Category I employee and not less than 66 days if he is a Category II employee. Now, a "Category I employee" has been defined under Para 2(a) of the Scheme as meaning an underground miner or any other underground piece worker and "Category II employee" has been defined as meaning an employee in a Coal Mine other than a Category I employee. Para 7 of the Scheme *inter alia* provides that the amount of bonus payable to an employee in respect of any quarter after 30th June, 1948, in the case of Coal Mines in West Bengal and Bihar shall be one third of the basic earnings of the employee for work done in that period or quarter in the coal mine wherein he qualifies for bonus. Para 9 of the Scheme provides that if an illegal strike as defined by Section 24 of the Industrial Disputes Act, 1947 (Act XXIV of 1947) takes place in a Coal Mine in any period or quarter, no bonus shall be payable in respect of the period or quarter, as the case may be, to all those who participate in such illegal strike. The Scheme also provides for the employers making returns to the Regional Labour Commissioner in prescribed forms of the amount of bonus paid by him for each quarter and for maintenance by the employer of registers of workmen employed underground and for penalties against the employer for failure to observe the provisions of the Scheme, etc., but we are not concerned with those provisions of the Scheme for the purposes of this case.

10. To revert to issue no. 1 under reference the Union's case is that the withdrawal of bonus to the 10 workmen mentioned earlier and listed in para. 1 of the Schedule to the order of reference, was not justified because these workmen, when they were working as garden mazdoors/malis under the old management, were getting the benefit of quarterly bonus under the Coal Mines Bonus Scheme as a condition of their service or a facility and under para. 3 of the terms settlement dated 14th January, 1955, the present management had agreed to continue that benefit. In other words, the Union's contention is that the withdrawal of the benefit of quarterly bonus by the present management was in contravention of the settlement of 14th January, 1955. The management's contentions on this point are that (1) the payment of bonus was not a condition of service of these workmen under the old management nor was it a facility and that therefore the stoppage of the payment of bonus by it was not breach of the settlement of 14th January, 1955. (2) That being malis these workmen as a class are not entitled to payment of bonus under the Scheme and that the old management had erroneously granted them bonus and that on detecting this error on the part of the former management it was justified in stopping this benefit to which they were not entitled. With this second argument I shall deal when dealing with issue No. 2 under reference.

11. Now, it is admitted that when the Bhowra Colliery was taken over by the present management, garden mazdoors/malis and were being paid bonus by the previous management. That they were paid bonus by the old management from the time the Scheme came into operation in 1948 with effect from 12th May, 1947, is established not only by the evidence of the 3 workmen (W.W. 1, 2 and 3) examined at the hearing by the Union, but by the statement of the management's witness, Shri Girish Chandra Choudhury (E.W. 1), who was in-charge of the

work connected with the Provident Fund and Bonus Scheme, from the dates they came into force in the Bhowra Colliery and who stated in his examination in Chief:—

"The malis concerned in this reference who were working as such when bonus first became payable were paid the same by the old employers namely the Eastern Coal Company Limited."

This witness (E.W 1) further admitted that deductions for Provident Fund contributions were made from the wages of the bungalow malis throughout their service with the previous owners and they were also paid bonus except for a period of four quarters during 1951-52, when they were not paid bonus. He further admitted that when the present management took over the Bhowra Colliery on 1st January, 1955, malis working in bungalows, were not paid bonus, but deductions from their wages for their contribution to their Provident Fund accounts were continued to be made for one year upto December 1955, and these were remitted to their Provident Fund accounts, with the Commissioner for Coal Mines Provident Fund.

12. The management has made much of the fact that for a period of above 4 quarters during 1951-52, when Messrs Mac Neil and Barry became the Managing Agents of the Bhowra Colliery, the payment of bonus was stopped to the malis. But the management's witness had to admit that after the payment of bonus was stopped by M/s. Mac Neil and Barry, an industrial dispute was raised and the payment of bonus was thereafter restored. The Union's case was that the payment of bonus was restored as the result of an agreement reached between the then Union and the management, but witness could not say whether the restoration was the result of such agreement. But he admitted that though payment of Bonus was stopped, the Provident Fund numbers of the accounts of the malis continued to be the same on restoration of payment of bonus.

13. The management's contention which it advanced at the hearing, was that this interruption in payment of bonus during 1951-52, showed that the payment of bonus was not a condition of service of the garden mazdoors/malis and therefore not guaranteed to them under the agreement of 14th January, 1955, and they could not, therefore, claim the benefit of payment of bonus as a condition of their service from the present management. I cannot accept this contention Para. 3 of the agreement of 14th January 1955, provided "the existing service conditions and facilities will be continued excepting pension" The "existing service conditions" had reference to the conditions of service as they were existing as on 1st January 1955, when the colliery was taken over. It is admitted that on 1st January 1955, the garden mazdoors/malis of the Bhowra Colliery were being paid bonus under the Coal Mines Bonus Scheme. They were being paid the same since the Scheme came into force in 1947, with effect from 12th May, 1947, except for the 4 quarters during 1951-52 when M/s. Mac Neil and Barry stopped payment of the same. Over that stoppage the workmen had raised an industrial dispute and the management thereafter continued to pay them the quarterly bonus. If any thing, that shows that M/s. Mac Neil and Barry also realised that the payment of bonus was one of the service condition of the garden mazdoors/malis, which they were entitled to. In any case, I have no doubt in my mind that the payment of bonus was one of the conditions of service of the garden mazdoors/malis of the Bhowra Colliery on the date the management took over the colliery on 1st January, 1955, and that under the settlement of 14th January, 1955, these garden mazdoors/malis who were getting the quarterly bonus were entitled to payment of the same from the present management. In my opinion, the payment of bonus by the old employers is also covered by the expression "facilities" referred to in para 3 of the settlement of 14th January, 1955. The whole spirit and purpose of the settlement of 14th January, 1955 was that the new management would continue to pay the employees of the Bhowra Collieries all the payments they were receiving from their old employers and as bonus was one of the payments, taken either as a condition of service and or as a facility, to which these workmen were admittedly entitled on the date the present management took over the Colliery, they were clearly entitled to that payment from the present management under the settlement of 14th January 1955. That this was also what the management had understood is proved by the fact that for one year after the agreement till end of December 1955, the management deducted from the wages of these garden mazdoors and malis their contribution for their Provident Fund. It has to be remembered that the Coal Mines Bonus Scheme is formulated under Section 6 of the Coal Mines Provident Fund and Bonus Scheme Act 1948, and in making deduction from their wages for contribution to their provident fund accounts, the management had at least for one year recognised that these workmen were entitled to continue to receive payment

of bonus, though it may not have paid the same to them. Under rule 25 of the Coal Mines Provident Fund Scheme, which has been formulated under the provisions of the Coal Mines Provident Fund and Bonus Scheme, Act 1948, every employee in a coal mine to which that Scheme applies is required to join the Provident Fund and become a member immediately after the end of the quarter following the quarter after 30th September 1948, in which he qualifies for Bonus under the provisions of the Coal Mines Bonus Scheme. By deducting the contribution to their Provident Fund accounts from their wages for a period of one year after 1st January 1955, the present management virtually recognised that the garden mazdoors/malis were entitled to continue to the payment of bonus. In any case, it is my considered opinion that these workmen were entitled to payment of bonus by the present management under para. 3 of the agreement of 14th January, 1955 as a service condition and/or facility, to which they were entitled under the old management.

14. I am also of the opinion that the settlement of 14th January, 1955 was a settlement as defined by clause (p) of Section 2 of the Industrial Disputes Act, as it was admittedly a settlement arrived at in the course of conciliation proceedings. I also accept the Union's contention that the settlement continues to be binding on the management as no notice as required by Sec. 19(2) of the Industrial Disputes Act, 1947, has been served by either party terminating the same.

15. I, therefore, hold on issue no. 1 under reference that the withdrawal of the benefit of bonus provided in the Coal Mines Bonus Scheme by the management of the Colliery from the ten garden mazdoors/malis viz., serial nos. 1, 4 to 8 and 11 to 14 listed in para (1) of the Schedule to the order of reference was not justified, and that they are entitled to payment of quarterly bonus from the present management under para 3 of the settlement of 14th January, 1955, from 1st January 1955; as they were being paid the same by the old management as a service condition or facility on the date of the transfer of the Bhowra Colliery to the present management.

16. I shall now deal with issue No. 2 under reference and the question is whether the garden mazdoors/malis referred to in para 1 to the Schedule to the Government order of reference are employed on domestic and personal work within the meaning of paragraph 3(b) of the Coal Mines Bonus Scheme and if not to what relief they are entitled to and from what date.

17. It is admitted that these garden mazdoors/malis work as such in the bungalows of the Colliery, which are occupied by its officers and other employees and their duty is to look after and maintain the gardens of these bungalows. It is admitted that they are paid directly by the Colliery of which they are the employees, and not by the officers or other employees of the Colliery who occupy these bungalows. It is further admitted that they are under the direction and control of the management of the Colliery and not of the occupants of the bungalows and are liable to be transferred to work from one bungalow to another.

18. The Union's contention is that they are not during "domestic and personal work", as they are looking after the gardens of the bungalows which are the property of the Colliery and for which work they are paid by the Colliery and not by the occupants of the bungalows.

19. The management has, however, contended (1) that under clause 3(b) of the Scheme all malis as a class are excluded from being entitled to payment of bonus (See para 6 of the management's written statement) and (2) that these workmen are employed in bungalows of the officers for the maintenance thereof and not in any way directly connected with coal mining and as such are workmen employed on domestic or personal work.

20. This issue really involves the interpretation of the expression "on domestic and personal work" occurring in para 3(b) of the Scheme, which I have already extracted earlier and which may be extracted here again:—

Para (3): "Class of employees eligible to qualify for Bonus.—Except as hereinafter provided, every employee in a coal mine to which this Scheme applies shall be eligible to qualify for a bonus:—

Exception.—An employee in a coal mine shall not be entitled to a bonus under the Scheme for the period during which (b) he is employed as a mali, sweeper or domestic servant on domestic and personal work."

It is admitted that none of the other exceptions mentioned under Para 3 of the Scheme apply to these workmen and it is therefore not necessary to refer to them.

21. On a plain reading of clause (b) of Para 3 it is clear that even a mali, sweeper or domestic servant employed in a mine would be eligible for bonus, unless he is employed on "domestic and personal work". The exception thus, does not cover malis, sweepers and domestic servants as a class as contended by the management in para 8 of its written statement, but excludes only such of this class of employees who are employed on "domestic and personal work". This is also borne out by the admitted fact that sweepers and malis employed by management to look after the gardens of the hospital/dispensary and/or of the office of the Colliery are eligible to and paid bonus under the Scheme.

22. The words "domestic" and "personal" are not defined in the Scheme. These words must, therefore, be given their ordinary meaning. The word "domestic" is defined by the Concise Oxford Dictionary as "of the home; house hold or family affairs and the word "personal" is defined as "ones own; individual; private". The expression "on domestic and personal work" therefore means one who is engaged in doing work for the Home or house hold of a private person or individual. Now, when doing work as garden mazdoors/malis in the bungalows belonging to the Colliery these workmen are, to use the language of the Company's Written Statement para 11, employed for the maintenance of these bungalows. They cannot, therefore, be said to be doing work for the home or house hold of the private individuals i.e. the officers who occupy these bungalows. In my opinion, when working as garden mazdoors/malis in the bungalows belonging to the Collieries, these workmen are looking after the property of the Colliery as employees of the Colliery and not as domestic servants of those officers who occupy these bungalows. These workmen are employed and paid by the Colliery, and are under the direction and control of the management and not of the officers who occupy these bungalows. There is no evidence whatsoever to show, as indeed there could not be, that these malis are doing the domestic or personal work of the occupants of these bungalows, or are liable to be dismissed or transferred by them, as the company's case is that they are looking after the maintenance of the bungalows belonging to the Collieries. In my opinion, in looking after the maintenance of these bungalows, it cannot possibly be said that they are doing "domestic and personal work". As is well known there was a general practice in the Collieries, which still exists in some Collieries, by which officers of Collieries were paid servants allowance and they used to engage malis, sweepers and other domestic servants to work for them in the bungalows provided for them by the Colliery. Probably clause (b) of Para 3 of the Scheme was meant to cover such employees who were clearly engaged on "domestic and personal work" for the officers who had engaged them, but that cannot be said of these garden mazdoors/malis, who are employed and paid by the management and who are under the control and management of the Colliery and not of the officers who occupy these bungalows.

23. Before an employee in a coal mine can be deprived of the benefit of bonus under the Scheme it would be for the management to prove that he falls within the ambit of the exceptions provided under the Scheme. Here the management has failed to prove that these workmen are doing "domestic and personal work".

24. Now, the Company's other contention as stated in para 11 of its Written Statement is, "that these workmen are employed in bungalows of the officers for the maintenance thereof and not in any way directly connected with coal mining and as such they are employed on domestic and personal work". In other words the company's contention is that only those employees who are doing work directly connected with coal mining, are entitled to bonus under the Scheme and all the rest of the employees must be deemed to be "on a domestic and personal work", and therefore covered by clause (b) of Para 3 of the Scheme and consequently not entitled to payment of bonus. But the short answer to this contention is that the Scheme nowhere states that only those employees whose work is "directly connected" with coal mining are entitled to bonus. If this contention of the Company were to be accepted, then a large number of employees in coal mines such as clerks, peons, hospital and welfare staff to name only a few of those who are admittedly paid bonus under the Scheme, would not be so entitled, as their work cannot be said to be directly connected with coal mining. Coming nearer home, the sweepers and malis employed in the Collieries showras, offices and hospitals are according to the Company entitled to bonus under the Scheme and are paid as such. These workmen cannot be said to be doing work directly connected with coal mining.

25. The Scheme does not contain any definition of the term "employee", nor does it seek to make any distinction between those employees whose work is directly connected with coal mining and others whose work is not so connected. Shri S. S. Kapoor, the Chief Personnel Officer of the Company seeks to support this contention of the management by a reference to the definition of the term "employee" contained in Sec. 2(d) of the Coal Mines Provident Fund and Bonus Schemes Act 1948 (Act XLVI of 1948) which defines an employee, as follows:—

"employee" means any person who is employed in any kind of work manual or otherwise in or in connection with a coal mine and who gets his wages directly or indirectly from the employer."

26. Now, it cannot be denied that the garden mazdoors/malis are doing manual work and it is admitted that they are paid directly by the company. The question is whether they are working in connection with a coal mine. I may pause and say that the expression "in connection with a coal mine" is a term of wider connotation than the expression "directly connected with coal mining," used by the Company in its written statement. A workman may be doing manual work in connection with a coal mine, which may not be directly connected with coal mining. The nexus need not be direct, it may even be indirect provided it is in connection with a coal mine. These garden mazdoors/malis in my opinion are doing manual work in connection with a coal mine because they are looking after properties situate in the Colliery, which have been provided for officers in connection with their work in the coal mines. Their work must therefore be held to be in connection with a coal mine and it is not necessary to enable them to be eligible for bonus that it should be also directly connected with coal mining. In my opinion considering the provisions of the Coal Mines Bonus Scheme, it is quite clear that it does not mean to provide bonus for only those directly connected with coal mining as contended by the Company. In my opinion the language of clause (b) of Para 3 of the Scheme itself makes this clear, because under it, it is assumed that sweepers, malls and domestic servants employed in coal mines as a class are doing work in connection with a coal mine and are eligible for payment of bonus and only such of this class who are employed "on domestic and personal work" are to be excluded from this benefit. The Union has relied upon the definition of the term "employee" contained in the certified Standing Orders of the Colliery where under Rule 1(a) the term employee has been defined as "all work-people, male or female, employed aboveground or underground, either directly by the Company or under a Contractor or Contractors except those who come within the category of officers of the Company or those whose basic pay exceeds Rs. 300/- per month." It is admitted that these garden mazdoors/malis are governed by the Standing Orders of the Company. It is clear from this definition also that an employee in a Colliery is not necessarily one whose work is directly connected with coal mining,

27. I, therefore, reject both the contentions of the management.

28. In the result I hold on issue no. 2 under reference that these garden mazdoors/malis mentioned in para of the Schedule are not employed on domestic and personal work within the meaning of paragraph 2(b) of the Coal Mines Bonus Scheme, 1948; and they would therefore be entitled to bonus under the Coal Mines Bonus Scheme, except Shri Chandra Deo Singh (Serial no. 3) who was not in service on the date of this reference.

29. I shall now deal with issue no. 3 under the order of reference. This question relates to the seven workmen named there who, according to the Union were formerly working as chainmen lamp-cleaners, hammermen, lorry cleaners etc under the old management and are working as malls under the present management and the question is whether they are entitled to bonus under the Coal Mines Bonus Scheme, and if so from what date. Whatever, might have been their designation and nature of work with the old employers prior to their having started working as malls, it is admitted by the management in Paras 12 and 14 of their Written Statement that they were serving as malls in bungalows of the Bhowra Colliery when the present management took over the Colliery and that the present management did not transfer them to work as malls.

30. The Union's contention is that because before being asked to do the work of malls they were working as Chain men, lamp cleaners, hammer men, lorry cleaners etc., they were entitled to be paid bonus even after they started working as malls. For this the Union relies on rule 26 of the coal mines standing order which as follows:—

"All workmen are liable to be transferred from one department to another or from one station to another or from one colliery to another under

the same management provided that such transfer does not cause any prejudice to their wages and other conditions of service and provided that reasonable notice is given of such transfer."

The Union has argued that by their being transferred to work as "malis" they could not be deprived of bonus to which they were entitled because before their transfer as malis they were working in categories which were entitled to payment of bonus and Rule 26 of the Standing Orders protects their right to bonus, and to deprive them of bonus would amount to making a prejudicial change in the conditions of their service. The management has, however, denied that it had any knowledge that these workmen were working in the Categories mentioned in the order of reference before their transfer as malis and the Union has not led sufficient evidence to establish this fact.

31. But the Union has further contended that these seven workmen are not covered by the exception provided by Para 3(b) of the Coal Mines Bonus Scheme. I have upheld this contention and as these seven workmen are also covered by Para 3 of the agreement 14th January 1955 because admittedly they were working as garden mazdoors/malis on the date of the transfer of the Colliery on 1st January 1955 and as admittedly they are working as malis under the new management, my answer to this issue will be that these seven workmen are also entitled to payment of bonus under the Coal Mines Bonus Scheme.

32. To summarise, I hold that those of the garden mazdoors/malis who were employed as such by the old management and who have continued to work as such under the new management are entitled to payment of bonus under paragraph 3 of the agreement of 14th January 1955 and also because they are not covered by the exception to Para 3(b) of the Coal Mines Bonus Scheme.

33. Now, with regard to the reliefs to which the 21 garden mazdoors/malis are entitled to and the dates from which they should be granted relief:

With regard to the following 16 garden mazdoors/malis—10 garden mazdoors/malis listed in para one and the six malis listed in para three to the Schedule to the order of Reference, namely:—

1. Shri Ramasabak (Serial No. 1 in para 1 of the Schedule)
2. Shri Samceser Ali (Serial No. 4 in para 1 of the Schedule)
3. Shri Mouladin (Serial No. 5 in para 1 of the Schedule)
4. Shri Aziz Khan (Serial No. 6 in para 1 of the Schedule)
5. Shri Bhagaban Das (Serial No. 7 in para 1 of the Schedule)
6. Shri Munnir Khan (Serial No. 8 in para 1 of the Schedule)
7. Shri Khadan (Serial No. 11 in para 1 of the Schedule)
8. Shri Mahabir (Serial No. 12 in para 1 of the Schedule)
9. Shri Furiu (Serial No. 13 in para 1 of the Schedule)
10. Shri Tobarka (Serial No. 14 in para 1 of the Schedule)
11. Shri Jvoti Bauri (Serial No. 1 in para 3 of the Schedule)
12. Shri Parameswar (Serial No. 2 in para 3 of the Schedule)
13. Shri Ismilc (Serial No. 4 in para 3 of the Schedule)
14. Shri Deonandan Gope (Serial No. 5 in para 3 of the Schedule)
15. Shri Gaya (Serial No. 6 in para 3 of the Schedule)
16. Shri Anadi Banerjee (Serial No. 7 in para 3 of the Schedule)

I hold that they are entitled to receive payment from the present management of Bhowra Colliery of quarter bonus for each quarter since 1st January 1955 for which they may have qualified to payment of bonus under the provisions of the Coal Mines Bonus Scheme, 1948; and I direct it to pay the same.

34. With regard to:—

1. Shri Puran (Serial No. 2 in para 1 of the Schedule)
2. Shri Sant Bahadur (Serial No. 9 in para 1 of the Schedule)
3. Shri Rambrich (Serial No. 10 in para 1 of the Schedule)

who joined service after 1st January 1955 and were in service on the date of reference I hold that they are entitled to payment from the present management of quarterly bonus for each quarter, since their respective dates of appointment as garden mazdoors/malis for which they may have qualified to receive bonus under the Coal Mines Bonus Scheme and direct the present management of the Bhowra Colliery to pay the same.

35. With regard to:—

1. Shri Chandradeo Singh (Serial No. 3 in para 1 of the Schedule)
2. Shri Sabali Mian (Serial No. 3 in para 3 of the Schedule)

I hold that Shri Chandradeo Singh is not covered by this reference, as he was not in service on the date reference, with regard to Sabali Mian I hold that he is entitled to payment of bonus for the periods for which he qualifies for bonus since his re-appointment in service as mali.

36. I further direct that all the workmen entitled to payment under this Award shall be paid the same within one month of the date of this Award.

37. As the workmen have succeeded, I direct the management to pay the Union Rs 150/- as costs.

(Sd.) SALIM M. MERCHANT,
Presiding Officer.

DHANBAD;

The 7th December, 1959.

[No. 1/111/58-LRII.]

ORDERS

New Delhi, the 4th January 1960

S.O. 97.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the East Bastacolla Colliery, Post Office Dhanisar, District Dhanbad and their workmen in respect of the matters specified in the Schedule hereto annexed:

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

THE SCHEDULE

Whether the action of the management of East Bastacolla colliery, Post Office Whansar, in not allowing Shri Uday Bhogta, miners' sirdar, to resume duty after the strike in the said Colliery which began from 14th July 1959, was called off, when all other workers were allowed to resume duty, is justified. If not, to what relief he is entitled?

[No. I.RII-2(200)/59.]

New Delhi, the 5th January 1960

S.O. 98.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Bankolla Colliery and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

SCHEDULE

Whether Messrs Jit Bahadur, Hari Singh and Meher Ali, workers of Bankolla Colliery, are being correctly paid in the daily-rated scales of pay category-II or whether they should be on monthly rates of pay. If they are to be on monthly

rates of pay, what should be their grade and with effect from which date should they be fixed on monthly scales?

[No. 2/192/59-LRII.]

P. R. NAYAR, Under Secy.

New Delhi, the 4th January 1960

S.O. 99.—The Government of the State of Punjab having nominated, in exercise of the powers conferred by clause (d) of section 4 of the Employees' State Insurance Act, 1948 (34 of 1948), Shri Hardev Singh Chhina, I.A.S., Secretary to the Government of Punjab, Vigilance and Labour and Employment Departments, as a member representing the said State on the Employees' State Insurance Corporation, in place of Shri R. I. N. Ahooja, I.A.S., the Central Government, in pursuance of the said section 4, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Labour and Employment No. HI-1(196)/57, dated the 15th March, 1958, namely:—

In the said notification, under the heading 'Members' and sub-heading '[Nominated by the State Governments under clause (d) of section 4]', for item 11, the following item shall be substituted, namely:—

"11. Shri Hardev Singh Chhina, I.A.S., Secretary to the Government of Punjab, Vigilance and Labour and Employment Departments, Chandigarh."

[No. F. HI-1(180)/59.]

BALWANT SINGH, Under Secy.

New Delhi, the 4th January 1960

S.O. 100.—In exercise of the powers conferred by section 8 of the Minimum Wages Act, 1948 (11 of 1948) read with section 9 of the said Act and rule 3 of the Minimum Wages (Central Advisory Board) Rules, 1949, the Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Labour and Employment No. LWI(I)6(15), dated the 17th November 1959, namely:—

In the said notification—

under the heading 'Independent Members',

for entry 5, the following entry shall be substituted, namely:—

"5. Shri D. G. Kale, Commissioner of Labour, Bombay".

LIST OF MEMBERS OF THE CENTRAL ADVISORY BOARD

Independent Members

1. Shri K. N. Subramanian, I.C.S., Joint Secretary, Ministry of Labour & Employment, Government of India, New Delhi.
2. Shri Harbans Raj Singh, Labour Commissioner, Punjab, Ambala.
3. Shri Uma Shankar, I.A.S., Labour Commissioner, Uttar Pradesh, Lucknow.
4. Shri B. P. Singh, I.A.S., Secretary to the Government of Bihar, Labour Department, Patna
5. Shri D. G. Kale, Commissioner of Labour, Bombay.
6. Shri A. Ramamurti, Chief Inspector of Factories, Andhra Pradesh, Hyderabad.

(Chairman).

By rotation for every meeting of the Board.

Representatives of Employers

1. Shri K. L. Dhandhanla, 135-Canning Street, Calcutta—1.
2. Shri S. C. Banerjee, Director, Hindustan Construction Co. Ltd., Construction House, Ballard Estate, Bombay—1.
3. Mr. J. L. Llewellyn, Deputy Chairman, Indian Tea Association, Royal Exchange, Calcutta.
4. Mr. K. S. Smith, Acting Manager, The British India Corporation Ltd., Cooper Allen Branch, Kanpur.
5. Shri K. Naoroji, Godrej and Boyce Manufacturing Co. Private Ltd., Lalbaug, Bombay—12.
6. Shri Dattatraya Mahadeo Dahanukar, Director, Maharashtra Sugar Mills Ltd., Industrial Assurance Bldg., Opposite Churchgate Station, Bombay—1.

Representatives of Workers

1. Shri R. L. Malviya, M.P., Member, Indian National Trade Union Congress, Working Committee, P.O. Monendergarh, Distt. Sarguja.
2. Shri M. T. Shukla, C/o Textile Labour Association, Gandhi Majoor Sevalaya, Bhadra, Ahmedabad.
3. Shri N. Satyanarayan Reddy, 101, Jawaharnagar, Chikkedpally, Hyderabad (Andhra Pradesh).
4. Shri S. R. Kulkarni, Secretary, Transport & Dock Workers' Union, Nagainder Chambers, 2nd Floor, Frere Road, Bombay—1.
5. Shri Jatin Chakravarty, Secretary, United Trades Union Congress, 249, Bowbazar Street, Calcutta.
6. Shri Henry M. Samuel, Member, Rajya Sabha, 6, Queen Victoria Road, New Delhi.

[No. LWI(I)6(21)/59.]

K. D. HAJELA, Under Secy.

New Delhi, the 5th January 1960

S.O. 101.—In exercise of the powers conferred by sub-section (1) of section 4 of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), the Central Government hereby makes the following further amendment in the Calcutta Unregistered Dock Workers (Regulation of Employment) Scheme, 1957, the same having been previously published as required by the said sub-section, namely:—

Amendment

In the said Scheme, in item (2) of the Schedule, the words, "except those employed by contractors appointed by the Ministry of Food & Agriculture for clearance of imported foodgrains" shall be omitted.

[No. Fac.184(13)/59.]

P. D. GAHIA, Under Secy.

